LIBRARY
SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
NOV 25 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-645

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., 1990 M Street, N.W., Washington, D.C. 20036,

and

NATIONAL RIGHT TO WORK COMMITTEE, 1990 M Street, N.W., Washington, D.C. 20036,

Petitioners,

—v.—

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, 8000 East Jefferson Avenue, Detroit, Michigan 48214,

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS and its DISTRICT LODGE 1578, 1300 Connecticut Avenue, N.W., Washington, D.C. 20036,

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES and its DISTRICT COUNCIL 77, 1155 Fifteenth Street, N.W., Washington, D.C. 20005,

AMERICAN FEDERATION OF TEACHERS, and its affiliate, DETROIT FEDERATION OF TEACHERS, 1012 14th Street, N.W., Washington, D.C. 20005,

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, ASSOCIATED ACTORS AND ARTISTES OF AMERICA, AFL-CIO, 1350 Avenue of the Americas, New York, N.Y. 10019,

UNITED FARM WORKERS NATIONAL UNION, AFL-CIO, P.O. Box 62, Keene, California,

(Continued on inside front cover)

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO and its LOCAL 146, 1750 New York Avenue, N.W., Washington, D.C. 20006,

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO and its LOCAL 383, 905 16th Street, N.W., Washington, D.C. 20006,

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and its DISTRICT 7 and LOCAL 7495, 1925 K Street, N.W., Washington, D.C. 20006,

and

OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO and its LOCAL 3-495, P.O. Box 2812, Denver, Colorado 80201,

Respondents.

WHITNEY NORTH SEYMOUR
Counsel for Petitioners
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

THOMAS S. JACKSON
1323 L Street, N.W.
Washington, D.C. 20036
(202) 466-8850

JOHN L. KILCULLEN
1747 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 785-9500

REX H. REED
1990 M Street, N.W.
Washington, D.C. 20006
(202) 296-0720

CONRAD K. HARPER
DEBORAH E. LYNCH
Simpson Thacher & Bartlett
One Battery Park Plaza
New York, New York 10004
(212) 483-9000
Of Counsel

November 25, 1974

INDEX

PAGE

Opinions Below 2

Jurisdiction 3

Questions Presented 3

Constitutional and Statutory Provisions Involved 3

Statement of the Case 5

REASONS FOR GRANTING THE WRIT:

I. In construing the "interested employer" proviso of the Landrum-Griffin Act to authorize its order compelling the disclosure of Foundation contributors, the District Court violated First Amendment rights of privacy and freedom of association and impaired the Foundation's ability to provide free legal services to needy workers 8

A. The statutory scheme 9

B. As an important issue of first impression, this Court should determine the appealability of a disclosure order which finally determines and violates First Amendment rights 11

PAGE

C. The disclosure order conflicts with the settled principles of *NAACP* v. *Alabama* and *NAACP* v. *Button* and construes the "interested employer" proviso of the Landrum-Griffin Act as requiring impairment of First Amendment rights 15

CONCLUSION 20

APPENDIX

Opinion of Charles R. Richey, U.S.D.J., Filed June 5, 1974 ..... 1A

Order of Charles R. Richey, U.S.D.J., Filed June 5, 1974 ..... 9A

Order of the United States Court of Appeals Dismissing Appeal, Filed June 28, 1974 ..... 11A

Order Extending Time to File Petition for Writ of Certiorari 12A

Order of the District Court Denying Motion for Amendment and Modification of Order, Filed June 20, 1974 ..... 13A

Order of the United States Court of Appeals Staying Order Pending Further Order, Filed June 28, 1974 ..... 16A

TABLE OF AUTHORITIES

PAGE

Cases

Adamszewski v. *Local 1487 Machinists*, 496 F.2d 777 (7 Cir.), *cert. denied*, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231) 10

American Civil Liberties Union, Inc. v. *Jennings*, 366 F. Supp. 1041 (D.D.C. 1973) (3-judge court), *prob. juris. noted sub nom., Staats* v. *American Civil Liberties Union, Inc.*, 94 S. Ct. 3066 (1974) 17

Baker v. *F & F Investment*, 470 F.2d 778 (2 Cir. 1972), *cert. denied*, 411 U.S. 966 (1973) 18

Bates v. *City of Little Rock*, 361 U.S. 516 (1960) 17

Bhd. of Railroad Trainmen v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964) 19

Bisceglia v. *United States*, 486 F.2d 706 (6 Cir. 1973), *cert. granted*, 94 S. Ct. 1931 (1974) 17

Buckley v. *American Federation of Television and Radio Artists*, 496 F.2d 305 (2 Cir. 1974), *petition for cert. filed*, 43 U.S.L.W. 3172 (U.S. Oct. 1, 1974) (No. 74-313) 8

Carey v. *Hume*, 492 F.2d 631 (D.C. Cir.), *petition for cert. dismissed*, 94 S. Ct. 2654 (1974) 18

Cohen v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949) 12, 14

Couch v. *United States*, 409 U.S. 322 (1973) 17

Democratic National Committee v. *McCord*, 356 F. Supp. 1394 (D.D.C. 1973) 18

Durkin v. *Murray*, 90 F. Supp. 367 (D.D.C. 1950) 9

PAGE

Eastland v. *United States Servicemen's Fund*, 488 F.2d 1252 (D.C. Cir. 1973), *cert. granted*, 43 U.S.L.W. 3208 (U.S. Oct. 15, 1974) (No. 73-1923) 17
Eisen v. *Carlisle & Jacquelin*, 94 S. Ct. 2140 (1974) 13-14

Farowitz v. *Associated Musicians Local 802*, 241 F. Supp. 895 (S.D.N.Y. 1965) 10

Garland v. *Torre*, 259 F.2d 545 (2 Cir.), *cert. denied*, 358 U.S. 910 (1958) 18
Gillespie v. *United States Steel Corp.*, 379 U.S. 148 (1964) 15

Harper & Row Publishers, Inc. v. *Decker*, 423 F.2d 487 (7 Cir. 1970), *aff'd by an equally divided court*, 400 U.S. 348, *rehearing denied*, 401 U.S. 950 (1971) 14
Hartley Pen Co. v. *United States District Court*, 287 F.2d 324 (9 Cir. 1961) 15

International Union, UAW v. *National Right to Work Legal Defense and Education Foundation, Inc. and National Right to Work Committee*, 366 F. Supp. 46 (D.D.C. 1974) 10
International Union, UAW v. *National Right to Work Legal Defense and Education Foundation, Inc. and National Right to Work Committee*, 376 F. Supp. 1060 (D.D.C. 1974) 2

Kusper v. *Pontikes*, 414 U.S. 51 (1973) 12

Lewis v. *American Federation of Television and Radio Artists*, 34 N.Y.2d 265, 313 N.E.2d 735, 357 N.Y.S.2d 419, *petition for cert. filed*, 43 U.S.L.W. 3172 (U.S. Oct. 1, 1974) (No. 74-314) 8

PAGE

Madden v. *Atkins*, 4 N.Y.2d 283, 151 N.E.2d 73, 174 N.Y.S.2d 633 (1958) 9

NAACP v. *Alabama*, 357 U.S. 449 (1958) 12, 15-16
NAACP v. *Button*, 371 U.S. 415 (1963) 15, 19
Naylor v. *Harkins*, 11 N.J. 435, 94 A.2d 825 (1953) 9
NLRB v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418 (1968) 9

Ochsner v. *Millis*, 382 F.2d 618 (6 Cir. 1967) 15

Pollard v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.) (3-judge court), *aff'd per curiam*, 393 U.S. 14 (1968) ..12, 17

Richardson v. *Communications Workers of America*, 443 F.2d 974 (8 Cir. 1971) 6, 13
Rock v. *Norfolk & Western Ry.*, 473 F.2d 1344 (4 Cir.), *cert. denied*, 412 U.S. 933 (1973) 19

Seay v. *McDonnell Douglas Corp.*, 427 F.2d 996 (9 Cir. 1970) 6
Sidberry v. *Stage Employees Local 307*, 4 FEP Cases 1272 (E.D. Pa. 1972) 6
Swift & Co. Packers v. *Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684 (1950) 12, 14

Trbovich v. *United Mine Workers of America*, 404 U.S. 528 (1972) 10

Underwood v. *Maloney*, 152 F. Supp. 648 (E.D. Pa. 1957), *aff'd in part, rev'd in part on other grounds*, 256 F.2d 334 (3 Cir.), *cert. denied*, 358 U.S. 864 (1958) 9

PAGE

United Mine Workers v. *Illinois State Bar Association*, 389 U.S. 217 (1967) 19

United States v. *Bank of Commerce*, 405 F.2d 931 (3 Cir. 1969) 17

United States v. *National Committee for Impeachment*, 469 F.2d 1135 (2 Cir. 1972) 17

United Transportation Union v. *State Bar of Michigan*, 401 U.S. 576 (1971) 19

Verville v. *International Association of Machinists*, Civil No. 37650 (E.D. Mich. May 29, 1974), *appeal pending* Nos. 74-1914 and 74-1915 (6 Cir.) 10

Vogler v. *McCarty, Inc.*, 451 F.2d 1236 (5 Cir. 1971) 19

Constitutional Provisions, Statutes and Rules

First Amendment 3, 7-8, 12-15, 17-19

Fourth Amendment 3, 7

Ninth Amendment 3, 7

Tenth Amendment 3, 7

Federal Election Campaign Act of 1971, 86 Stat. 3, 47 U.S.C. §801 and 2 U.S.C. §431 17

Labor-Management Reporting and Disclosure Act of 1959, "Landrum-Griffin Act," §101(a)(4), 73 Stat. 522, 29 U.S.C. §411(a)(4) 4-6, 9-11, 15, 19

28 U.S.C. §451 4-5

28 U.S.C. §1254(1) 3

28 U.S.C. §1291 ..... 3, 13

28 U.S.C. §1292(b) 7

28 U.S.C. §1331 5

PAGE

28 U.S.C. §1337 5

28 U.S.C. §2403 4-5

29 U.S.C. §185 10

29 U.S.C. §412 5

29 U.S.C. §413 9

45 U.S.C. §§151-188 10

Publications

105 Cong. Rec. 6725 (April 25, 1959) 9

Kansas City, Mo. Star, Sept. 30, 1973, at 8A, col. 1 17

Philadelphia Evening Bulletin, July 15, 1974, at 1, col. 3 17

C. Stevenson, *Labor Violence—A National Scandal*, Reader's Digest at 153 (Aug. 1973) 13

Wall St. J., July 15, 1971, at 4, col. 1 13

Washington Post, March 2, 1974, at E38, col. 1 17

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. .....

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., 1990 M Street, N.W., Washington, D.C. 20036,

and

NATIONAL RIGHT TO WORK COMMITTEE, 1990 M Street, N.W., Washington, D.C. 20036,

Petitioners,

—v.—

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, 8000 East Jefferson Avenue, Detroit, Michigan 48214,

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS and its DISTRICT LODGE 1578, 1300 Connecticut Avenue, N.W., Washington D.C. 20036,

AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES and its DISTRICT COUNCIL 77, 1155 Fifteenth Street, N.W., Washington, D.C. 20005,

AMERICAN FEDERATION OF TEACHERS, and its affiliate, DETROIT FEDERATION OF TEACHERS, 1012 14th Street, N.W., Washington, D.C. 20005,

AMERICAN FEDERATION OF TELEVISION AND RADIO ARTISTS, ASSOCIATED ACTORS AND ARTISTES OF AMERICA, AFL-CIO, 1350 Avenue of the Americas, New York, N.Y. 10019,

UNITED FARM WORKERS NATIONAL UNION, AFL-CIO, P.O. Box 62, Keene, California,

SHEET METAL WORKERS INTERNATIONAL ASSOCIATION, AFL-CIO and its LOCAL 146, 1750 New York Avenue, N.W., Washington, D.C. 20006,

LABORERS' INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO and its LOCAL 383, 905 16th Street, N.W., Washington, D.C. 20006,

COMMUNICATIONS WORKERS OF AMERICA, AFL-CIO, and its DISTRICT 7 and LOCAL 7495, 1925 K Street, N.W., Washington, D.C. 20006,

and

OIL CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION, AFL-CIO and its LOCAL 3-495, P.O. Box 2812, Denver, Colorado 80201,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

National Right to Work Legal Defense and Education Foundation, Inc. ("Foundation") and National Right to Work Committee ("Committee") petition for a writ of certiorari to review the per curiam order of the United States Court of Appeals for the District of Columbia Circuit entered on June 28, 1974 dismissing the appeal of the Foundation and the Committee. The court below thereby left standing the order of the United States District Court for the District of Columbia which orders the disclosure to the plaintiffs of 190 names of contributors to the Foundation.

Opinions Below

The per curiam order of the Court of Appeals, filed June 28, 1974, is unreported (11A).* The opinion of the District Court is reported at 376 F. Supp. 1060 (1A). The order of the District Court, which was left standing by the Court of Appeals, is unreported (9A).

* Citations with the suffix "A" are to the Appendix hereto.

Jurisdiction

The order of the Court of Appeals was entered on June 28, 1974 (11A). On September 13, 1974 The Chief Justice extended the time in which to file a petition for a writ of certiorari to and including November 25, 1974 (12A). The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254(1).

Questions Presented

1. Whether an appeal may be taken from a District Court disclosure order which finally determines and overrides First Amendment rights.

2. In this action under the Landrum-Griffin Act to bar legal assistance to needy workers from the Foundation, a tax-exempt legal aid organization, should the First Amendment rights of privacy and freedom of association of 190 Foundation contributors be overridden and the Foundation's ability to provide free legal services impaired by a District Court order requiring disclosure of contributors' names and the amounts of their contributions?

Constitutional and Statutory Provisions Involved

This case involves the First, Fourth, Ninth and Tenth Amendments to the United States Constitution.

This case also involves 28 U.S.C. §1291 which provides that:

> "The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts

of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court."

This case also involves §101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 ("Act"), known as the "Landrum-Griffin Act", 73 Stat. 522, 29 U.S.C. §411 (a)(4), which provides that:

"No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legislature or to communicate with any legislator: *Provided*, That any such member may be required to exhaust reasonable hearing procedures (but not to exceed a four-month lapse of time) within such organization, before instituting legal or administrative proceedings against such organizations or any officer thereof: *And provided further*, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Since the instant case draws into question the constitutionality of the Landrum-Griffin Act, an Act of Congress affecting the public interest, and neither the United States nor any agency, officer or employee thereof is a party, it is noted that 28 U.S.C. §2403 may be applicable. To our knowledge, no court of the United States as defined by 28 U.S.C.

§451 has, pursuant to 28 U.S.C. §2403, certified to the Attorney General the fact that the constitutionality of such Act of Congress has been drawn into question.

Statement of the Case

The Foundation and the Committee are defendants in an action brought by ten national and international unions ("plaintiffs") in the District Court for the District of Columbia. Jurisdiction is alleged under §102 of the Landrum-Griffin Act, 29 U.S.C. §412; federal question jurisdiction, 28 U.S.C. §1331; and jurisdiction under a federal statute regulating commerce, 28 U.S.C. §1337. The unions assert that the Foundation acts as a conduit for "interested employer[s]" to finance litigation against various labor organizations, contrary to §101(a)(4) of the Act. They seek damages and declaratory and injunctive relief.

The Committee is a non-profit, tax-exempt corporation established in 1955 to promote voluntary unionism by various educational activities. The Foundation is an independent non-profit, tax-exempt corporation established in 1968 to give free legal assistance to needy workers injured by compulsory unionism. Both organizations are supported by contributions from the general public.

The discovery record shows total donations to the Foundation in 1972 were $1,727,572 with an average contribution of less than $22 (Larson dep. 467).* One-third of the donors identified themselves as being business contributors and their average contribution was less than $73. No single

* Citations to "Larson dep." refer to the discovery deposition of Foundation President Reed Larson taken by plaintiff unions.

contribution was more than $5,000 and only ten contributions were between $1,000 and $5,000 each.

With its legal staff and cooperating lawyers throughout the United States, the Foundation provides legal assistance in forty cases (Larson dep. 873) challenging various unlawful aspects of compulsory unionism such as (a) racial discrimination, *e.g., Sidberry* v. *Stage Employees Local 307*, 4 FEP Cases 1272 (E.D. Pa. 1972); (b) the unauthorized use of union agency fees for political purposes, *e.g., Seay* v. *McDonnell Douglas Corp.*, 427 F.2d 326 (9 Cir. 1970); and (c) union violence against workers who lawfully refuse to join a union, *e.g., Richardson* v. *Communications Workers of America*, 443 F.2d 974, 983-84 n.12 (8 Cir. 1971).

In their first cause of action, the unions specify 17 Foundation-supported lawsuits in which many employers and plaintiff unions are defendants. The unions charge that by such support the Foundation, the Committee and "employers giving financial support to the Foundation, implement a conspiracy between those parties to violate Section 101(a)(4) of the Act" (Amended Complaint ¶14). Without first seeking discovery from Foundation-assisted workers or from the workers' employers, the unions served interrogatories asking the Foundation to identify 190 of its contributors and their contributions.* The Foundation and the Committee objected, maintaining that such information

---

* The unions seek disclosure of the names of (a) 37 Foundation contributors who contributed between $500 and $5,000 in 1972; (b) the first 37 Foundation contributors or the last 37 such contributors, in alphabetical order, who contributed between $100 and $500 in 1972; and (c) the amounts of contributions to the Foundation during 1971 and 1972 of the 116 companies whose officers or employees are listed as members of the Foundation's publicly identified Advisory Council.

was protected under the First, Fourth, Ninth and Tenth Amendments and that disclosure would violate constitutionally guaranteed privacy and freedom of association and impair the ability of the Foundation to provide legal services to needy workers.* They also argued that at a minimum, First Amendment rights should not be infringed without first exhausting all reasonable alternatives to determine "interest" such as initiating discovery of Foundation-supported plaintiffs or their employers or members of the Advisory Council.

The District Court, Hon. Charles R. Richey, J., on plaintiffs' motion, nevertheless directed disclosure and specifically authorized the unions' counsel to make the names known to persons undertaking further investigations (9A-10A). The District Court did not discuss petitioners' First Amendment claims nor did it determine that the unions could not establish the application of the Act's "interested employer" proviso absent disclosure of contributors' names.

The District Court, on petitioners' timely application, declined to certify its order for interlocutory appeal pursuant to 28 U.S.C. §1292(b), stating and rejecting for the first time petitioners' First Amendment claims and concluding that "there is no other reasonable way" for the unions "to obtain the information sought" (14A).

Petitioners' timely appeal from the disclosure order was summarily dismissed by the Court of Appeals on June 28, 1974 on the ground of lack of jurisdiction (11A).

---

* For brevity, petitioners' constitutional claims are hereinafter referred to as "First Amendment rights."

On June 27, 1974 petitioners filed a petition for a writ of mandamus in the Court of Appeals and that Court stayed and continues to stay enforcement of the District Court's disclosure order pending further proceedings on mandamus (17A). Since the mandamus petition is still *sub judice,* we respectfully request that no action be taken on the instant petition for writ of certiorari until the Court of Appeals has acted upon the pending petition for writ of mandamus.

REASONS FOR GRANTING THE WRIT

POINT I

In construing the "interested employer" proviso of the Landrum-Griffin Act to authorize its order compelling the disclosure of Foundation contributors, the District Court violated First Amendment rights of privacy and freedom of association and impaired the Foundation's ability to provide free legal services to needy workers.

This case involves a national legal aid organization whose forty cases address federal labor policy and related constitutional issues in state and federal courts.* Court-ordered disclosure of its contributors' names and amount of contributions and the resulting impairment of its ability to raise funds is of national consequence.

---

* *E.g., Buckley* v. *American Federation of Television and Radio Artists,* 496 F.2d 305 (2 Cir. 1974), *petition for cert. filed,* 43 U.S.L.W. 3172 (U.S. Oct. 1, 1974) (No. 74-313) (First Amendment held not to bar compulsory union dues by television commentator); *Lewis* v. *American Federation of Television and Radio Artists,* 34 N.Y.2d 265, 313 N.E.2d 735, 357 N.Y.S.2d 419, *petition for cert. filed,* 43 U.S.L.W. 3172 (U.S. Oct. 1, 1974) (No. 74-314) (same holding as to radio commentator).

A. The Statutory Scheme

The fundamental issue here is whether First Amendment rights of the Foundation's contributors can be impaired by construing the Landrum-Griffin Act's "interested employer" proviso to require disclosure of contributors' names and contributions. Such construction is unjustified. There is no suggestion in the legislative history of §101(a)(4) that Congress intended to prohibit independent organizations like the Foundation from assisting workers' lawsuits. To the contrary, the legislative history clearly shows that "interested employer" was *not* to include "a friend, who happens to be an employer of people in a totally unrelated business, a bank or anything else. . . ." 105 CONG. REC. 6725 (April 25, 1959) (remarks of Senator Javits).

The District Court below is alone in holding that the "interested employer" proviso applies to *all* suits by union members against their unions irrespective of whether the members' bill of rights under Title I of the Landrum-Griffin Act are in issue (6A-8A).* Every other court addressing

---

* None of the cases cited by the District Court (4A-6A) in support of its conclusion, including *NLRB* v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418 (1968), involved the "interested employer" proviso; rather, all of them concerned the first proviso of §101(a)(4) which requires union member exhaustion of internal union remedies prior to suit. Such exhaustion in Title I cases and all other cases merely codifies prior law and, in any event, is discretionary with the court. *E.g.*, *NLRB* v. *Industrial Union of Marine & Ship Workers*, *supra*, 391 U.S. at 426 and n.8; *Underwood* v. *Maloney*, 152 F. Supp. 648, 658 (E.D. Pa. 1957), *aff'd in part, rev'd in part on other grounds*, 256 F.2d 334 (3 Cir.), *cert. denied*, 358 U.S. 864 (1958); *Durkin* v. *Murray*, 90 F. Supp. 367, 368 (D.D.C. 1950); *Madden* v. *Atkins*, 4 N.Y.2d 283, 291-92, 151 N.E.2d 73, 76-77, 174 N.Y.S.2d 633, 638 (1958); *Naylor* v. *Harkins*, 11 N.J. 435, 444, 94 A.2d 825, 830 (1953).

The ban on "interested employer" financing, however, restricts a union member's pre-existing right to assistance from whomever he wishes. Section 103 of the Landrum-Griffin Act, 29 U.S.C. §413,

this question, including the District Court below in an earlier opinion in this action reported at 366 F. Supp. 46, 48 (D.D.C. 1974), has held to the contrary. *Adamszewski* v. *Local 1487 Machinists*, 496 F.2d 777, 784-85 (7 Cir.), *cert. denied*, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231); *Verville* v. *International Association of Machinists*, Civil No. 37650 (E.D. Mich. May 29, 1974) (slip op. 10), *appeal pending*, Nos. 74-1914 and 74-1915 (6 Cir.). Title I is part of an Act described by this Court as "the first major attempt by Congress to regulate the *internal affairs of labor unions.*" *Trbovich* v. *United Mine Workers of America*, 404 U.S. 528, 530 (1972) (Emphasis added.) None of the 17 Foundation-supported lawsuits named in the amended complaint involves a Title I right.

The Foundation by definition is not an "interested employer" under §101(a)(4) because it has no economic stake in or employment relationship to any party in litigation which it supports. Congress in fact authorized an employer like a bank or a worker's friend to provide assistance to plaintiff workers; only "interested" employers were barred from giving such assistance. The Foundation's general concern for plaintiff workers does not constitute "interest" under §101(a)(4). *Farowitz* v. *Associated Musicians Local 802*, 241 F. Supp. 895, 908 (S.D. N.Y. 1965).

Assuming *arguendo* the contributors are "interested" within the meaning of §101(a)(4), their "interest" is rele-

---

preserves this right as to non-Title I issues such as claims under the Railway Labor Act, 45 U.S.C. §§151-188, and §301 of the Taft-Hartley Act, 29 U.S.C. §185. *Adamszewski* v. *Local 1487 Machinists*, 496 F.2d 777, 784-85 (7 Cir.), *cert. denied*, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231).

vant only if they influence the Foundation's litigation decisions. For under the Constitution, the statute should not be read as outlawing contributions on the basis of contributors' mere beliefs. There is no evidence that the contributors have any influence over litigation and the Foundation's Policy Guidelines prohibit acceptance of any "contribution made for the purpose of financing or assisting in financing any litigation on behalf of the contributor or any employee of the contributor" (Larson dep. 899). While we do not begrudge the unions' right to explore this issue by appropriate discovery directed at Foundation staff, at Foundation-supported plaintiffs or their employers, we maintain that §101(a)(4) cannot constitutionally compel disclosure of contributors' names where, as here, the unions have made no showing that this is the only reasonable way to determine contributor "interest." The unions' position, sustained in the District Court, is that their amended complaint and their failure so far in discovery to find *any* contributor influence over Foundation-supported litigation authorize subordination of the contributors' First Amendment rights. As discussed below, this position is without merit.

B. As an Important Issue of First Impression, This Court Should Determine the Appealability of a Disclosure Order Which Finally Determines and Violates First Amendment Rights

In ordering disclosure of 190 names of Foundation contributors and their contributions, the District Court finally determined First Amendment rights independent of and collateral to the principal controversy in this action, namely, whether §101(a)(4) forbids legal assistance by the Foundation to workers suing their employers and unions.

This Court has not previously determined whether disclosure orders violative of the First Amendment are appealable. This issue is of manifest importance to the proper functioning of pre-trial discovery in the district courts because such disclosure orders, if unappealable, would vitiate First Amendment rights repeatedly upheld by this Court. *E.g., Kusper* v. *Pontikes*, 414 U.S. 51, 56-57 (1973); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.) (3-judge court), *aff'd per curiam*, 393 U.S. 14 (1968); *NAACP* v. *Alabama*, 357 U.S. 449 (1958).

The disclosure order below meets all the tests for appealability set forth in *Cohen* v. *Beneficial Industrial Loan Corp.*, 337 U.S. 541, 546-47 (1949), where this Court held that a district court order refusing to require security for reasonable expenses and attorney's fees was appealable because at the time of final judgment, "it will be too late effectively to review the present order, and the rights [in question] . . . vill have been lost, probably irreparably." 337 U.S. at 546. *Cohen* "appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated." *Id.*

In *Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S.A.*, 339 U.S. 684, 688-89 (1950), this Court laid particular stress on the importance of the rights at issue. There, the district court vacated an attachment of a vessel allegedly transferred in fraud of creditors. This Court held, relying on *Cohen*, that the order was immediately appealable because subsequent appellate review "would be an empty rite after the vessel had been released and

the restoration of the attachment only theoretically possible." 339 U.S. at 689. "[A]ppeals only from final decisions in 28 U.S.C. §1291 should not be construed so as to deny effective review of a claim fairly severable from the context of a larger litigious process." *Id.*

Last term in *Eisen* v. *Carlisle & Jacquelin*, 94 S. Ct. 2140, 2149-50 (1974), this Court reaffirmed the doctrine of *Cohen*, holding that an order concerning class action notice and costs was appealable where it conclusively determined "a collateral matter unrelated to the merits of petitioner's claims." 94 S. Ct. at 2150.

There can be no doubt here that disclosure of Foundation contributors' names and amounts of contributions conclusively disposes of their First Amendment rights. The very purpose of privacy and freedom of association is to permit joint activity free of unwarranted governmental intrusion and forced disclosure. Revealing the contributors' names will expose them to reprisals* from those wishing to discourage such contributions, with the consequence that the Foundation—and the workers it assists —will face significant diminution of financial support. Once contributors' names are revealed or the amounts of their contributions disclosed to the unions,** subsequent

---

* People who do not support unions reportedly have been victimized by union personnel. *E.g., Richardson* v. *Communications Workers of America*, 443 F.2d 974, 983-84 n.12 (8 Cir. 1971); Wall St. J., July 15, 1971, at 4, col. 1; C. Stevenson, *Labor Violence—A National Scandal*, Reader's Digest at 153 (Aug. 1973).

** The disclosure order offers vague and inadequate protection by providing that contributors' names and contributions "not be made public and that Plaintiffs' counsel make known such employer identities only to particular persons whose assistance is required for the investigation of the contributing employers' interests and activities" (10A). The "employers' interests and activities" subject

judicial action will be ineffectual. *See, e.g., Harper & Row Publishers, Inc.* v. *Decker*, 423 F.2d 487, 490 (7 Cir. 1970), *aff'd by an equally divided court*, 400 U.S. 348, *rehearing denied*, 401 U.S. 950 (1971).

Even if such disclosure were viewed as integral rather than collateral to the unions' claim that the Foundation is an "interested employer", the disclosure order is nonetheless appealable because it irrevocably determines First Amendment rights without any later opportunity by judicial process or otherwise to erase the information from the minds of union representatives. Where First Amendment rights are imperiled they should be at least as well protected by appellate review as rights pertaining to fixing bond for costs or vacating attachments or permitting class actions. The disclosure order is appealable because review after final judgment would be plainly inadequate. *Cohen* v. *Beneficial Industrial Loan Corp., supra; Swift & Co. Packers* v. *Compania Colombiana Del Caribe, S.A., supra; Eisen* v. *Carlisle & Jacquelin, supra; cf. Harper & Row Publishers, Inc.* v. *Decker, supra* (mandamus issued to review

---

to "investigation" are synonymous with plaintiff-directed *carte blanche* inquiry, namely, (a) "whether the employers are in the same 'line of business' as the unions against whom they are financing litigation"; (b) the "employers' relationships with the unions against whom they are financing litigation through the Foundation"; (c) "whether contributing employers have a stake in the legal propositions being advanced in the suits against the unions which they are financing"; (d) "whether the same contributing employers are also financing the defendant Committee's efforts, which include direct anti-union lobbying and persuader activities"; and (e) "other anti-union conduct of the contributing employers, which will bear upon their 'interest' in contributing to the litigations against unions financed and managed by the defendant Foundation" (Plaintiffs' Memorandum Supporting Motion to Compel Answers to Interrogatories, served January 18, 1974, at 4-5).

order infringing attorney-client privilege); *Hartley Pen Co.* v. *United States District Court*, 287 F.2d 324, 330 (9 Cir. 1961) (mandamus issued to review order requiring divulgence of trade secret).

Moreover, in *Gillespie* v. *United States Steel Corp.*, 379 U.S. 148 (1964), this Court relied on the fundamental importance of the rights at issue in holding a district court ruling appealable because it dismissed, prior to trial, state law and unseaworthiness claims in a Jones Act suit. This Court reasoned that the district court ruling, like the District Court order below, was " 'fundamental to the further conduct of the case.' " 379 U.S. at 154. In the unions' view, the contributors' identities are similarly fundamental and, we maintain, First Amendment rights are no less so. Accordingly, the District Court disclosure order is appealable.*

C. The Disclosure Order Conflicts With the Settled Principles of *NAACP* v. *Alabama* and *NAACP* v. *Button* and Construes the "Interested Employer" Proviso of the Landrum-Griffin Act as Requiring Impairment of First Amendment Rights

The District Court's disclosure order premised upon §101 (a)(4) violates Foundation contributors' First Amendment rights to privacy and freedom of association in their support of a bona fide, charitable tax-exempt legal aid organization. Disclosure of contributors' names nullifies First

---

* *See* the patent suit, *Ochsner* v. *Millis*, 382 F.2d 618 (6 Cir. 1967), where the Sixth Circuit held appealable a district court discovery order refusing to compel a party's answer to deposition questions. The Sixth Circuit reasoned that the discovery order "constituted a final decision for all practical purposes, for if it be error, this is the only opportunity which the junior parties will have to *effectively* review the District Court's order." 382 F.2d at 623 (emphasis original).

Amendment rights "at the very moment of [their] assertion." *NAACP* v. *Alabama*, 357 U.S. 449, 459 (1958). The District Court's disclosure order flatly violates settled principles, as applicable to the federal government as to the states, concerning rights of freedom of association and privacy. In holding that Alabama could not constitutionally compel disclosure of membership lists of the National Association for the Advancement of Colored People which had *inter alia* furnished financial support and legal assistance to blacks, a unanimous Court stated:

> "Effective advocacy of both public and private points of view, particularly controversial ones, is undeniably enhanced by group association, as this Court has more than once recognized by remarking upon the close nexus between freedom of speech and assembly. . . . It is beyond debate that freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment which embraces freedom of speech.
>
> • • •
>
> . . . This Court has recognized the vital relationship between freedom to associate and privacy in one's associations. . . . Inviolability of privacy in group association may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs." *NAACP* v. *Alabama*, *supra*, 357 U.S. at 460, 462. (Citations omitted.)

Foundation contributors, like Alabama contributors to the NAACP, are not a popular minority and their common purpose to assist an even more unpopular minority—workers suing their employers and unions—will, it is fair to say, be gravely impaired by disclosure of their names and

amounts of contributions.* First Amendment rights do not disappear merely because, as here, it is alleged that such contributions were made by "interested employer[s]." Even criminal allegations of misconduct are not sufficient to penetrate the shield of the First Amendment.** *Bates* v. *City of Little Rock*, 361 U.S. 516 (1960); *Pollard* v. *Roberts*, 283 F. Supp. 248 (E.D. Ark.) (3-judge court), *aff'd per curiam*, 393 U.S. 14 (1968); *see also*, *Eastland* v. *United States Servicemen's Fund*, 488 F.2d 1252 (D.C. Cir. 1973), *cert. granted*, 43 U.S.L.W. 3208 (U.S. Oct. 15, 1974) (No. 73-1923); *Bisceglia* v. *United States*, 486 F.2d 706 (6 Cir. 1973), *cert. granted*, 94 S. Ct. 1931 (1974). It follows that civil allegations of statutory violations are, by themselves, insufficient to vitiate First Amendment protections.†

The unions, however, prevailed on the District Court to accept their view that contributors' identities went to the heart of their case, thereby requiring immediate dis-

---

* *E.g.*, *see* reports of union violence against non-union sympathizers and facilities. Philadelphia Evening Bulletin, July 15, 1974, at 1, col. 3; Washington Post, March 2, 1974, at E38, col. 1; Kansas City, Mo. Star, Sept. 30, 1973, at 8A, col. 1.

** First Amendment rights of *group* privacy and freedom of association, which necessarily involve disclosure of identities to a group or its representatives, differ fundamentally, therefore, from the Fifth Amendment *individual* privilege against self-incrimination which has been held inapplicable to incriminating documents in the hands of non-party accountants and banks. *See*, *Couch* v. *United States*, 409 U.S. 322 (1973); *United States* v. *Bank of Commerce*, 405 F.2d 931 (3 Cir. 1969).

† Nor can the disclosure of political contributions mandated by the Federal Election Campaign Act of 1971 ("FECA"), 86 Stat. 3, 47 U.S.C. §801 *et seq.* and 2 U.S.C. §431 *et seq.*, be analogized to Foundation contributions. Bona fide non-political private organizations "dealing with national policy" under First Amendment aegis are not subject to FECA disclosure requirements. *United States* v. *National Committee for Impeachment*, 469 F.2d 1135, 1142 (2 Cir. 1972); *American Civil Liberties Union, Inc.* v. *Jennings*, 366 F. Supp. 1041, 1054-57 (D.D.C. 1973) (3-judge court), *prob. juris. noted sub nom.*, *Staats* v. *American Civil Liberties Union, Inc.*, 94 S. Ct. 3066 (1974).

closure despite the contributors' constitutional rights. But the unions demonstrably failed to explore other available and more relevant routes of discovery, such as depositions of Foundation-supported plaintiffs and their employers and examination of publicly identified members of the Foundation's Advisory Council. These deponents might be asked if they know of contributions to the Foundation by any employer. The record below, however, is barren of any constitutional basis for overriding the contributors' First Amendment rights. In these circumstances and assuming *arguendo* that at some point the contributors' First Amendment rights yield to the unions' demands for disclosure, the District Court was manifestly premature in requiring disclosure when other less disruptive constitutional avenues of discovery remain available. *Baker* v. *F & F Investment*, 470 F.2d 778 (2 Cir. 1972), *cert. denied*, 411 U.S. 966 (1973) (disclosure of confidential news sources denied because plaintiff made no effort to exhaust other available sources of information); *Carey* v. *Hume*, 492 F.2d 631 (D.C. Cir.), *petition for cert. dismissed*, 94 S. Ct. 2654 (1974) (disclosure of confidential news sources ordered *after* plaintiff demonstrated that he had exhausted all other practical sources of the information); *Garland* v. *Torre*, 259 F.2d 545 (2 Cir.), *cert. denied*, 358 U.S. 910 (1958) (same as *Carey* v. *Hume*, *supra*). In addition, the District Court below in another action denied a request for disclosure of confidential news sources where no demonstration had been made that other means had been exhausted. *Democratic National Committee* v. *McCord*, 356 F. Supp. 1394, 1398 (D.D.C. 1973) (Richey, J.).

As a legal aid organization, the Foundation is constitutionally no different from the NAACP Legal Defense and Educational Fund ("LDF") or the American Civil Liberties Union. The District Court's order would force disclosure of corporate contributors to all such organizations where they aid workers who assert constitutional

or other legal claims against unions.* By construing the "interested employer" proviso of §101(a)(4) to reach the Foundation's constitutionally protected activities, the District Court rendered the statute constitutionally infirm and violated the principle that "groups can unite to assert their legal rights as effectively and economically as practicable." *United Transportation Union* v. *State Bar of Michigan*, 401 U.S. 576, 580 (1971).

In *United Transportation Union*, this Court summarized the constitutional doctrine first enunciated in *NAACP* v. *Button*, 371 U.S. 415 (1963), where it held that the First Amendment, as here, protects the group right of providing free legal assistance in litigation. This Court stated:

> "The common thread running through our decisions in *NAACP* v. *Button* [371 U.S. 415 (1963)], *Trainmen* [*Bhd. of Railroad Trainmen* v. *Virginia ex rel. Virginia State Bar*, 377 U.S. 1 (1964)] and *United Mine Workers* [*United Mine Workers* v. *Illinois State Bar Association*, 389 U.S. 217 (1967)], is that collective activity undertaken to obtain meaningful access to the courts is a fundamental right within the protection of the First Amendment. However, that right would be a hollow promise if courts could deny associations of workers or others the means of enabling their members to meet the costs of legal representation." *United Transportation Union* v. *State Bar of Michigan*, *supra*, 401 U.S. at 585-86.

Disclosure of contributors' names threatens the Foundation's very existence as a financially independent source of legal assistance to deserving workers throughout the country. The nationwide scope of Foundation-supported litigation and the disclosure order's effect on federal labor policy and constitutional doctrine underscore the need for review in this Court.

---

* *See, e.g.*, LDF-supported cases, *Vogler* v. *McCarty, Inc.*, 451 F.2d 1236 (5 Cir. 1971); *Rock* v. *Norfolk & Western Ry.*, 473 F.2d 1344 (4 Cir.), *cert. denied*, 412 U.S. 933 (1973).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted and the disclosure order of the District Court for the District of Columbia reversed.

Respectfully submitted,

WHITNEY NORTH SEYMOUR
Counsel for Petitioners
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

THOMAS S. JACKSON
1828 L Street, N.W.
Washington, D. C. 20036
(202) 466-8850

JOHN L. KILCULLEN
1747 Pennsylvania Avenue, N.W.
Washington, D. C. 20006
(202) 785-9500

REX H. REED
1990 M Street, N.W.
Washington, D. C. 20006
(202) 296-0720

CONRAD K. HARPER
DEBORAH E. LYNCH
Simpson Thacher & Bartlett
One Battery Park Plaza
New York, New York 10004
(212) 483-9000

Of Counsel

November 25, 1974

APPENDIX

Opinion of Charles R. Richey, *U.S.D.J.*,
Filed June 5, 1974

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action No. 839-73

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, *et al.*,

Plaintiffs,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., *et al.*,

Defendants.

APPEARANCES:

For the Plaintiffs:

JOSEPH L. RAUH, JR., Esquire
JOHN SILARD, Esquire
ELLIOTT C. LICHTMAN, Esquire
Washington, D.C.

For the Defendants:

JOHN L. KILCULLEN, Esquire
REX H. REED, Esquire
THOMAS S. JACKSON, Esquire
Washington, D.C.

WHITNEY NORTH SEYMOUR, Esquire
CONRAD K. HARPER, Esquire
DEBORAH E. LYNCH, Esquire
New York, New York

MEMORANDUM OPINION

Once again this case is before the Court, in this instance on Plaintiff's Motion to Compel Answers to Interrogatories. After careful consideration of the memoranda filed in support of and in opposition to that motion, and the able oral argument of counsel, the Court has decided to grant Plaintiffs' Motion by Order of even date herewith. However, the matter does not end there. In their memoranda filed with the Court, the parties present divergent opinions as to the applicability of the second proviso to Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 73 Stat. 522, 29 U.S.C. §411(a)(4), which prohibits "interested employer" financing of employee lawsuits against unions and confers a statutory right of action upon unions to protect themselves from employer interference within the scope of Section 101(a)(4). See this Court's Memorandum Opinion in *International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, et al. v. National Right to Work,* 366 F.Supp. 46 (D.D.C. 1974). The statutory prohibition giving rise to a union right of action states in pertinent part:

> "No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency * * * provided * * * that no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition."

Defendants contend that the proviso restricts so-called interested employer financing *only* of those employee lawsuits wherein a worker brings a complaint against his or

her union showing a violation of rights guaranteed by Section 101(a)-(b) of Title I of the Act. Plaintiffs argue that the plain meaning of the statute does *not* confine the Section 101(a)(4) proviso to suits against unions which assert Title I violations; rather, Congress intended the Section to apply to any judicial, administrative, or other proceeding brought by a member against his or her union regardless of the nature of the cause of action asserted. For the reasons set forth below, the Court has determined that the proviso's limitation on interested employer financing encompasses every employee suit against his own union and, therefore, we must reject the defendant's proposed restriction of the proviso's prohibition to suits claiming Title I violations.

We start with the language of Section 101(a)(4) itself which is unambiguous. The Section applies without qualification to "an action in any court, or in a proceeding before any administrative agency." The proviso, which follows, restrains interested employers from financing "any *such action,* proceeding, appearance, or petition" and clearly refers to "an action * * * or * * * proceeding" discussed in the primary clause of the section. There is nothing in the statutory language just mentioned to suggest that operation of Section 101(a)(4) with its proviso is somehow confined to Title I lawsuits. As the Court noted in its original memorandum Opinion in this case, "(w)here Congressional intent is clear in the language of the statute, there is no need to resort to general rules of statutory construction or legislative history in order to construe the provision in issue. * * *" *International U., U.A., A. & A.I.W.* v. *National Right to Work,* 366 F. Supp. at 48.

There are several decisions by appellate courts indicating that Section 101(a)(4) of the Act has application above and beyond suits or proceedings invoking Title I rights. The

United States Court of Appeals for this Circuit in *Roberts* v. *N.L.R.B.*, 350 F.2d 427 (D.C. Cir. 1965), considered Section 101(a)(4) of the Act in determining, in part, whether an order of the National Labor Relations Board, finding that the petitioner Union had engaged in unfair labor practices in violation of Section 8(b)(1)(A) of the National Labor Relations Act[1] by fining a member because he had filed unfair labor practice charges with the Board, was invalid because the member failed to first pursue reasonable hearing procedures within the union. The Labor-Management Reporting and Disclosure Act came into play in this action because Section 101(a)(4) of the Act provides, where practicable, for a union member's exhaustion of the union's complaint procedures before turning to the Board or another forum for relief. Thus, the *first* proviso of Section 101(a)(4) which directly precedes the interested employer prohibition, states:

> "[t]hat any such member may be required to exhaust *reasonable hearing procedures* (but not to exceed a four-month lapse of time) *within such organization, before instituting legal* or administrative proceedings against such organization or any officer thereof • • •"

In its application of the above limitation on a worker's right to sue to the Board's Order premised upon Section 8(b)(1)(A) of the NLRA, the Court of Appeals determined that the operation of Section 101(a)(4) of the LMRDA did not in any way preclude the Board's ultimate exercise of its traditional powers under the NLRA to protect individuals from coercion by labor organizations, *but,*

> *"The proviso does authorize indeed it may require,* the agency or court to which the member comes for relief

[1] 29 U.S.C. §158(b)(1)(A).

> to withhold the exercise of its authority—for four months if reasonable internal procedures are available and are not earlier exhausted—in deference to the Congressional desire that a solution be reached by means other than at the hands of public authorities." 350 F.2d at 430. (Emphasis added)

The Court of Appeals' consideration and application of Section 101(a)(4) and the statutory limitations thereupon in its review of proceedings before the Labor Relations Board leaves no doubt that the Section applies beyond the area of suits and proceedings asserting Title I rights under the LMRDA.

The Court's conclusion in this regard is further buttressed by the recent decision by the Supreme Court in *N.L.R.B.* v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418, 88 S.Ct. 1717 (1968), a case involving an exhaustion of internal union procedures issue similar to that in *Roberts, supra.* The issue presented was "whether consistent with the applicable federal statutes (the NLRA and LMRDA) a union may penalize one of its members for seeking the aid of the Board without exhausting all internal union remedies." 88 S.Ct. at 1720. The Court noted that the constitution of the union charged with an unfair labor practice provided that a member could be expelled for filing a charge with the Board without first having exhausted "all remedies and appeals within the Union." 88 S.Ct. at 1721. With respect to such internal procedures, Section 8(b)(1)(A) of the NLRA preserves to a union "the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein." 29 U.S.C.A. §158(b)(1)(A). Notwithstanding this restraint on judicial interference with a union's regulation of its internal affairs, the Court found that where union rules penalize

members for filing unfair labor practice charges with the Board, other considerations of public policy are operative and must be effectuated. 88 S.Ct. at 1721.

However, the exhaustion of internal procedures requirement of Section 101(a)(4) of the LMRDA raised a further question as to the propriety of the Board action. The Court, in reviewing the relevancy of the first proviso to Section 101(a)(4) and commenting upon its applicability to unfair labor practice charges before the Labor Relations Board, held that the proviso did not bar a dissident worker's access to the Board and, ultimately, the courts, where his grievance could be reviewed and the public policy issues fully aired. The Court concluded that the wording "may be required" in the proviso,

> "is not a grant of authority to unions more firmly to police their members but a statement of policy that the public tribunals whose aid is invoked may in their discretion stay their hands for four months, while the aggrieved person seeks relief within the union. We read it, in other words, as installing in this labor field a regime comparable to that which prevails in other areas of law before the federal courts, which often stay their hands while a litigant seeks administrative relief before the appropriate agency. * * * We conclude that unions were authorized to have hearing procedures for processing grievances of members, provided those procedures did not consume more than four months of time, but that a court or agency might consider whether a particular procedure was "reasonable" and entertain the complaint even though those procedures had not been "exhausted". 88 S.Ct. at 1723-24.

Similarly, this Court reads the second proviso to Section 101(a)(4) of the Act "as installing in this labor field" a

principle that interested employers must stay their hands from contributing to employee suits against their unions regardless of the type of claims asserted therein.

Defendants also argue that where an action is properly brought by a union member against his union premised upon a non-Title I claim, "interested employer" financing is not precluded by Section 101(a)(4) of the Act because such preclusion would limit a union member's rights in violation of Section 103 of the Act. 29 U.S.C. §413. Section 103 provides:

> "Nothing contained in this subchapter shall limit the rights and remedies of any member of a labor organization under any State or Federal law or before any court or other tribunal, or under the constitution and by-laws of labor organization."

Defendants contend that were the Court to apply Section 101(a)(4) beyond the area of Title I suits, for example, to NLRB proceedings,[2] it would be "limiting" the union member's right to sue in derogation of Section 103.[3]

---

[2] *N.L.R.B.* v. *Industrial Union of Marine & Ship Workers*, 391 U.S. 418, 88 S.Ct. 1717 (1968); *Roberts* v. *N.L.R.B.*, *supra*.

[3] In support of this proposition, defendants rely on the recent decision by the Court of Appeals for the Seventh Circuit in *Adamczewski* v. *Local 1487, Machinists*, 73 CCH Lab. Cas. ¶14,463 (7th Cir. 1974). In that case, the Court found that the suit was financed by "interested employers" and on that basis dismissed a claim for injunctive relief arising under Section 101(a)(5) of the LMRDA. The Court chose not to dismiss an additional cause of action brought pursuant to Section 301 of the NLRA, 29 U.S.C. §185, on similar grounds in light of the so-called savings provision, Section 413, set forth in the text above. Instead, after finding that the employees who had brought the suit were "not * * * precluded by (Section 101(a)(4)) from pursuing any other remedies properly brought," the Court went on to dismiss the additional claim on a separate ground. 73 CCH Lab. Cas. ¶14,463 at 29,481. Defendants argue on the basis of *Adamczewski* that a claim "properly brought" under a statute other than Title I of the LMRDA

Defendants misconceive the import of Section 103, which is intended generally to preserve employee rights of action under the NLRA. It does not preserve a pre-existing right to employer financing since obviously employers are under no such obligation. At best, a dissident and litigious worker has a right to accept his employer's financial support, just as he is entitled to accept a loan from his bank or neighbor. However, it is the responsibility of this Court in implementing the mandate of the LMRDA to apply the statutory ban on "interested employer" contributions to employee suits against unions. The result is not an infringement on an employee's right to sue his union, but a limitation on what monies can finance the suit. The decision to restrain employer financing of employee lawsuits against unions was made by Congress through the enactment of Section 101 (a)(4) and the LMRDA, and the Court intends to implement this Congressional mandate where appropriate.

In view of the foregoing reasons, the statutory ban on "interested employer" financing extends beyond suits or proceedings arising under Section 101(a)-(b) of Title I of the LMRDA.

/s/ CHARLES R. RICHEY
CHARLES R. RICHEY
United States District Judge

Date June 5, 1974

---

may be financed by interested employers. Defendants' application of such a holding on the part of the Seventh Circuit is simply erroneous. *Adamzewski* stands for the proposition that the determination that an interested employer has financed a suit arising under the NLRA or the Railway Labor Act, 45 U.S.C. §151-188, is not a basis for dismissal. We find no suggestion in *Adamzewski* that such a case may continue on its merits nourished by interested employer financing. The Court did not need to reach that question since it dismissed the matter in all respects. It is this Court's opinion that such financing could have been restricted pursuant to Section 101(a)(4), notwithstanding the progression of the suit on its merits.

Order of Charles R. Richey, *U.S.D.J.*,
Filed June 5, 1974

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Civil Action 839-73

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558, and 25, *et al.*,

Plaintiffs,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,

and

NATIONAL RIGHT TO WORK COMMITTEE,

Defendants.

ORDER

Upon consideration of Plaintiffs' Motion to Compel Answers to Interrogatories, the memoranda filed in support of and in opposition thereto and the able argument of counsel, and it appearing to the Court that the information Plaintiffs seek goes to the heart of this litigation, and it further appearing that Plaintiffs have demonstrated good cause for obtaining the necessary information, it is

ORDERED this 5th day of June, 1974, that Plaintiffs' Motion to Compel Answers to Interrogatories is granted, and that

Defendants are required to provide Plaintiffs within fifteen days hereof with answers to interrogatories or portions of interrogatories as follows:

1. The first sentence of Interrogatory No. 3 in "Set No. II of Interrogatories by Plaintiffs to Defendants."

2. Interrogatory No. 1 in "Set No. II of Interrogatories by Plaintiffs to Defendants", requesting identification of certain donors to the Defendant Foundation, but only to the extent of identifying,

   (a) the 37 donors who made the donations identified in the answers by Defendants to interrogatories 2(b)(ii) and 2(b)(ii) [*sic*, should be 2(b)(ii) and 2(b)(iii)],

and

   (b) 37 of the donors among the 1048 donations identified in the answer by Defendants to interrogatory 2(b)(iv), the 37 to be the first or last 37 on the alphabetized donor list.

AND IT IS FURTHER ORDERED that the employer identities disclosed to Plaintiffs by Defendants' answers compelled by this Order not be made public and that Plaintiffs' counsel make known such employer identities only to particular persons whose assistance is required for the investigation of the contributing employers' interests and activities in the five specific respects recited in Plaintiffs' Memorandum Supporting Motion to Compel Answers to Interrogatories.

/s/ CHARLES R. RICHEY
CHARLES R. RICHEY
United States District Judge

Order of the United States Court of Appeals Dismissing Appeal, Filed June 28, 1974

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1973

Civ. No. 839-73

No. 74-1660

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, *et al.*,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., *et al.*,

Appellants.

Before:

LEVENTHAL, MACKINNON and WILKEY,
Circuit Judges.

ORDER

On consideration of appellants' motion for supersedeas and stay, and this Court not having jurisdiction over the order of the District Court appealed from, it is

ORDERED by the Court that appellants' aforesaid motion is denied and this appeal is dismissed.

Per Curiam

Order Extending Time to File Petition for Writ of Certiorari

SUPREME COURT
OF THE UNITED STATES

No. A-156

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC., *et al.*,

Petitioners,

—v.—

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, ETC., *et al.*

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including November 25, 1974.

/s/ WARREN E. BURGER
Chief Justice of the United States

Dated this 13 day
of September, 1974.

Order of the District Court Denying Motion for Amendment and Modification of Order, Filed June 20, 1974

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

C.A. 839-73

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA and its LOCALS 1093, 558 and 25, *et al.*,

Plaintiffs,

—v.—

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,

and

NATIONAL RIGHT TO WORK COMMITTEE,

Defendants.

ORDER

The Court has before it Defendants' Motion for Certification under 28 U.S.C. §1292(b) and Plaintiffs' opposition thereto. In their motion, Defendants ask the Court to amend its Order of June 5, 1974 compelling identification of names of contributors to defendant Right to Work Foundation so as to include a certification to the United States Court of Appeals for the District of Columbia Circuit pursuant to 28 U.S.C. §1292(b). Defendants contend that the Court's Order entered June 5, 1974 involves controlling

questions of law as to which there are substantial grounds for differences of opinion, and that an immediate appeal from such Order will materially advance the ultimate termination of the instant litigation. The Court does not believe there are substantial grounds for differences of opinion respecting the aforementioned Court Order compelling identification of names of contributors. Accordingly, the standards of §1292(b) have not been met and Defendants' motion must be denied.

Contrary to Defendants' assertions, this Court has not ridden roughshod over Defendants' freedom of association or right to privacy. Furthermore, after careful consideration of the Memoranda filed in support of and in opposition to Plaintiffs' Motion to Compel Answers to Interrogatories, and based upon the record at the oral argument on Defendants' Motion in which all counsel argued in able and comprehensive fashion, the Court found in its June 5 Order that the information sought by plaintiffs "goes to the heart of this litigation" and that Plaintiffs had "demonstrated good cause for obtaining the necessary information." In addition, there is no other reasonable way for Plaintiffs to obtain the information sought in the subject interrogatories and discovery process.

In light of the Court's Findings and the recent decision of the Court of Appeals for this circuit in *Carey* v. *Hume*, No. 71-1736 (D.C. Cir. Jan. 28, 1974), it is clear that Plaintiffs are entitled to the material they seek, notwithstanding Defendants' assertion of First Amendment rights to withhold the information. See also *Garland* v. *Torre*, 259 F.2d 545 (2d Cir. 1958), cert. denied 358 U.S. 910 (1958); *Baker* v. *F & F Investment*, 470 F.2d 778 (2d Cir. 1972).

The criteria discussed by the Court of Appeals in *Carey* v. *Hume*, when applied to the facts of this case, compel

granting Plaintiffs the discovery they desire. In light of the sensitivity of the information Plaintiffs seek through certain of their interrogatories, the Court earlier provided protection for the Defendants and their contributing employers by strictly limiting the use to which Plaintiffs' counsel may put the names they discover. As a matter of law, the Defendants are entitled to no more.

Where a decision such as that of the Court of Appeals in *Carey* v. *Hume* so clearly controls the discovery questions raised in a party's motion to compel answers to interrogatories, it cannot be said that there exists a "substantial ground for difference of opinion" warranting a stay of the proceedings and certification of the issues to the Court of Appeals. Indeed, stopping the case in its present posture would be contrary to the interests of justice in effecting a timely and proper termination of this litigation.

Accordingly, for all the above reasons, it is by the Court this 20th day of June,

ORDERED that Defendants' Motion for Amendment and Modification of its Order compelling Discovery entered June 5, 1974 to Provide for Certification under 28 U.S.C. §1292(b) to the Court of Appeals be and the same is hereby denied; and it is

FURTHER ORDERED that the Court's Order entered June 5, 1974 be stayed for a period of 5 days from the date hereof in which time Defendants may seek appellate review of the ruling therein.

/s/ CHARLES R. RICHEY
CHARLES R. RICHEY
United States District Judge

Order of the United States Court of Appeals Staying Order Pending Further Order, Filed June 28, 1974

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SEPTEMBER TERM, 1973

No. 74-1661

NATIONAL RIGHT TO LEGAL DEFENSE AND EDUCATION FOUNDATION INC., and NATIONAL RIGHT TO WORK COMMITTEE,
Petitioners,

—v.—

HONORABLE CHARLES R. RICHEY, District Judge, United States District Court for the District of Columbia,
Respondent.

Before:

LEVENTHAL, MACKINNON and WILKEY,
Circuit Judges.

ORDER

On consideration of the petition for writ of mandamus and for stay, it is

ORDERED by the Court that responses shall be filed to the aforesaid petition on or before July 8, 1974, and, it is

FURTHER ORDERED by the Court that the order of the District Court entered June 5, 1974, is stayed pending further order of this Court to afford this Court an opportunity to consider the petition for writ of mandamus and the responses thereto.

Per Curiam

Circuit Judge MacKinnon would deny the motion for stay.

SUPREME COURT, U. S.

Supreme Court, U. S.
FILED
DEC 23 1974
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-645

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,
and
NATIONAL RIGHT TO WORK COMMITTEE,
Petitioners,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCALS 1093, 558 AND 25, *et al.*,
Respondents.

BRIEF IN OPPOSITION FOR RESPONDENTS

JOSEPH L. RAUH, JR.
JOHN SILARD
ELLIOTT C. LICHTMAN
HARRIETT R. TAYLOR
RAUH AND SILARD
1001 Connecticut Ave., N.W.
Washington, D.C. 20036
Attorneys for Respondents

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

INDEX

	Page
COUNTERSTATEMENT	1
REASONS FOR DENYING THE WRIT	14
I. No Substantial Question Arises From Dismissal of Petitioners' Attempted Interlocutory Appeal	14
II. Petitioners Have No Plausible Constitutional Basis for Refusing Disclosure of the Material Evidence Sought by Plaintiffs	15
CONCLUSION	24

APPENDIX—Legislative History of the Second Proviso to Section 101(a)(4), LMRDA 1a

TABLE OF CASES

Adamszewski v. *Local 1487, Machinists*, 496 F. 2d 777, cert. denied, 43 U.S. L.W. 3280 ..... 11, 19
Alexander v. *United States*, 201 U.S. 117 14
Arroyo v. *United States*, 359 U.S. 419 14
Askew v. *Hargrave*, 401 U.S. 476 22
Bates v. *Little Rock*, 361 U.S. 516 24
Borden's Co. v. *Baldwin*, 293 U.S. 194 16
Braden v. *Local 146, Sheet Metal Workers' International Assoc. and Paul Mueller Company*, Civil Action No. 2829, U.S. District Court, W.D. Mo., So. Div. 24
Branzburg v. *Hayes*, 408 U.S. 665 18
Carey v. *Hume*, 492 F. 2d 631, cert. dismissed, 94 S. Ct. 2654 16
Cobbledick v. *United States*, 390 U.S. 323 ..... 12, 15, 16
Ex Parte Peru, 318 U.S. 578 14
Fishgold v. *American Federation of Musicians, et al.*, 72 Civil 5008, U.S. District Court, So. D. N.Y. 14
Forrester v. *Operative Plasterers' & Cement Masons International Assoc., et al.*, Case No. 2689, U.S. District Court, W.D. Mo., So. Div. 18

Page

Gabauer v. *Woodcock, et al.*, 72 C. 164 (2), E.D. Mo. .. 18
Gabauer, et al. v. *Woodcock, et al.*, 72 C. 180 (A), E.D. Mo. 18
Garland v. *Torre*, 259 F. 2d 545, cert. denied, 358 U.S. 910 16
Garment Workers v. *Labor Board*, 366 U.S. 731 21
Gibson v. *Florida Legislative Investigation Committee*, 372 U.S. 539 16
Huskey v. *Woodcock, et al.*, 72 C. 165 (4), E.D. Mo. .. 18
Industrial Union v. *NLRB*, 379 F. 2d 702 (C.A. 3, 1967) 19
Labor Board v. *Borg-Warner*, 356 U.S. 342 21
Labor Board v. *Jones & Laughlin*, 301 U.S. 1 21
Labor Board v. *Katz*, 369 U.S. 736 21
La Buy v. *Howes Leather Co.*, 352 U.S. 249 14
Machinists v. *Labor Board*, 311 U.S. 72 21
McNamara, et al. v. *Johnston, et al.*, CA No. 71-C-654, N.D. Ill. 18
NAACP v. *Alabama*, 357 U.S. 449 16
NAACP v. *Button*, 371 U.S. 415 .....20, 22
NLRB v. *General Electric Co.*, 418 F. 2d 736 (C.A. 2, 1969) 21
Reid v. *Automobile Workers*, 479 F. 2d 517, cert. denied, 94 S. Ct. 592 4
Roberts v. *NLRB*, 350 F. 2d 427 (C.A.D.C., 1965) 19
Schlagenhauf v. *Holder*, 379 U.S. 104 14
Scull v. *Virginia*, 359 U.S. 344 16
Seay v. *McDonnell Douglas Corp.*, 85 LRRM 2007, U.S. District Court, C.D. Calif. 4
Texas & N.O.R. Co. v. *Ry. Clerks*, 281 U.S. 548 20
United States v. *Auto. Workers*, 352 U.S. 567 24
United States v. *Nixon*, 94 S. Ct. 3090 .....14, 16
United States v. *Ryan*, 402 U.S. 530 14
United States v. *United States District Court*, 407 U.S. 297 14
Virginian Ry. Co. v. *System Federation*, 300 U.S. 515 20
Watkins v. *United States*, 354 U.S. 178 16

TABLE OF STATUTES AND OTHER AUTHORITIES

Erdman Act of 1898, Section 10, 30 Stat. 424 20
Labor-Management Reporting and Disclosure Act of 1959, Section 101(a)(4), 73 Stat. 522, 29 U.S.C. § 411(a)(4) 2

Page

Labor-Management Reporting and Disclosure Act of 1959, Section 102, 73 Stat. 523, 29 U.S.C. § 412 ... 6
"Legislative History of the Labor-Management Reporting and Disclosure Act of 1959" (Department of Labor) 18, 19
National Labor Relations Act, 29 U.S.C. §§ 151, 158(a)(2), 186(a) 21, 22
Norris-LaGuardia Act of 1932, Section 2, 47 Stat. 70, 29 U.S.C. § 102 21
Railway Labor Act, 45 U.S.C. § 152, Third 20
105 Cong. Rec. 6724-6725 (April 25, 1959) 7

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-645

NATIONAL RIGHT TO WORK LEGAL DEFENSE AND EDUCATION FOUNDATION, INC.,
and
NATIONAL RIGHT TO WORK COMMITTEE,
Petitioners,

v.

INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA AND ITS LOCALS 1093, 558 AND 25, *et al.*,
Respondents.

BRIEF IN OPPOSITION FOR RESPONDENTS

COUNTERSTATEMENT

This case arises from petitioners' efforts to block a discovery order in a suit asking that defendant Right to Work Foundation be enjoined from using employer funds to encourage and finance suits against unions in violation of federal law. The challenged disclosure order of the District Judge requires that defendants reveal the identities of a sample of 190 among over eight thousand of their employer-contributors under conditions of litigation confidentiality. Finding

that such evidence "goes to the heart of this litigation" and that there is "no other reasonable way for plaintiffs to obtain the information sought," the District Court ordered its disclosure. Defendants sought appellate review by a mandamus petition in the Court of Appeals and an accompanying interlocutory appeal to that Court. The Court of Appeals dismissed their interlocutory appeal, but simultaneously took under advisement defendants' mandamus petition and stayed the District Court's order. We demonstrate herein that no substantial question is presented by the lower court's dismissal of defendants' appeal.

* * * *

This suit was filed in 1973 by ten labor unions and their affiliates against two national "right to work" groups financed by employers to attack union security and union organization. Plaintiffs assert that defendants are using employer money to encourage and finance "right to work" suits by dissident employees against their unions, in violation of the second proviso to Section 101(a)(4) of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C § 401.[1] The discovery proceedings already conducted in this case give substance to that claim and to the high materiality of the limited disclosures plaintiffs seek regarding the identities of a sample of 190 among thousands of employer-contributors to the Right to Work Foundation's operations.

---

[1] "No labor organization shall limit the right of any member thereof to institute an action in any court, or in a proceeding before any administrative agency, irrespective of whether or not the labor organization or its officers are named as defendants or respondents in such action or proceeding, or the right of any member of a labor organization to appear as a witness in any judicial, administrative, or legislative proceeding, or to petition any legis-

1. *The National Right to Work Committee.* The defendant National Right to Work Committee advertises itself as a "Coalition of Employees and Employers" (Larson deposition transcript in the District Court [hereinafter "tr."] 584-585). It was publicly launched in 1955 under the chairmanship of Edwin S. Dillard, a North Carolina manufacturer, with former Congressman Fred Hartley, Jr., as its President. The Committee announced its plan to fight various forms of union security arrangements and agreements (tr. 30-31). It is clear that the initial funding of the National Committee was from employers and business interests. Five of the six known Committee founders were employers or others affiliated with corporations and business entities (see Plaintiffs' Answers to Set Number One of Interrogatories by Defendants [hereinafter "Plaintiffs' Answers"] at Appendix E, pp. 3-5). Indeed, defendants have admitted that as late as 1973 the sum of $840,546 — *representing 84% of the Committee's proposed $1 million budget for that year* (tr. 316)—came to the Committee in contributions from corporations, businesses, and other employers (Defendants' Response to Plaintiffs' Set Number III of Interrogatories, answer 7(c)). The Committee has long advertised to its donors the business deductibility of their contributions (Larson Deposition Plaintiffs' Exhibits Nos. 51 and 52).

From the beginning, the National Committee's operations were directed to propaganda campaigns,

lature or to communicate with any legislator: . . . *And provided further, That no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition*" (emphasis added).

lobbying, film distributions, speeches to employees, and other public activities advancing the interests of the funding employers to inhibit or eliminate the union shop, the agency shop, the checkoff, and other forms of union-dues support. In the mid-1960s the Committee added litigation as a weapon in its arsenal (tr. 764, 765, 787, 790, 839, 842-843). Several major suits, some fomented and all of them funded by the Committee, were filed at that time by employees against their unions challenging agency shop agreements between the union and the employer, and particularly challenging the use of their union payments for political activities (*id*). Among these Committee-financed union security challenge suits were *Reid* v. *McDonnell Douglas Corp.*, which was ultimately dismissed (*Reid* v. *Automobile Workers*, 479 F.2d 517, C.A. 10 (1973), cert. denied, 94 S.Ct. 592 (1973)), and *Seay* v. *McDonnell Douglas Corp.*, which has also been dismissed (85 LRRM 2007, Dist. Ct., C.D. Calif., 1973). In 1968 the Committee decided to enhance its litigation function by creating a tax-exempt litigating arm which would obtain charitable deductibility status under Section 501(c)(3) of the Internal Revenue Code. Accordingly, by a 1968 resolution of the Committee's Board of Directors, there was created the "National Right to Work Legal Defense and Education Foundation, Inc." Nine of the eleven members of the Foundation's Board of Trustees are also on the Board of Directors of the Committee (tr. 69), and the two organizations are run from the same offices by the same executive director, Mr. Reed Larson (tr. 78, 80-82, 35).

2. *The National Right To Work Foundation.* Since its inception, the defendant Foundation has

financed some 50 litigations throughout the United States by employees and union members against their unions, challenging the legality of various forms of union security and union support requirements contained in contracts and agreements with employers (tr. 753, 818). The few examples given by petitioners (Pet. 6) of the types of cases in which they provide legal assistance are far from representative. Of some fifty cases they are financing, only the *Sidberry* case alleges racial discrimination, and only two (including *Richardson*) allege an assault or other form of physical violence. By contrast, seven challenge union use of dues or agency fees for political purposes; twenty-eight challenge the "union shop" requirement that employees pay dues or agency fees to the union; and six others challenge the union hiring hall or other means by which union members are allegedly given preference over non-members.

Hardly any of the Foundation's suits have succeeded, but the Foundation has steadily grown richer, attaining by 1972 an annual contributions level of $1,727,572 (Defendants' Answers to Set Number I of Interrogatories by Plaintiffs, answer 1). Defendants have already conceded that $609,794.56 of that amount appears on their own records as having been given by 8,361 employers (Defendants' Answers to Set Number II of Interrogatories by Plaintiffs, answers 2(a) and 2(c)). Actually, plaintiffs believe and intend to show upon further discovery that the employer portion of the Foundation's annual contributions income is well over 50%, and indeed closer to the 84% employer support already conceded by defendants in the case of the Committee's annual income.

3. *The Complaint.* Employer financing, by and through the Committee and the Foundation, of a nationwide campaign of suits by dissident employees was deemed by the plaintiff unions who have suffered from that campaign a violation of the second proviso to Section 101(a)(4) of the Act. That proviso bars interested employers from "directly or indirectly" financing suits by union members. Accordingly, in 1973 plaintiffs instituted this action, whose first claim seeks an injunction against the continued contribution of financial support by interested employers through the defendant Committee and Foundation to suits by union members against their unions.

4. *Proceedings Below.* Defendants moved to dismiss the Complaint on a variety of grounds, including objections to the jurisdiction of the Court and a claim that the "interested employer" ban of the Act applies only to the immediate employer of the employee who is suing his union. Plaintiffs opposed the motion, contending that jurisdiction was clear under the specific terms of Section 102 of the Act. As to defendants' second point, plaintiffs demonstrated that both the language and the legislative history of the "interested employer" proviso repel defendants' "immediate employer" construction. As concerns language, the proviso prescribes that with respect to "an action in any court, or in a proceeding before any administrative agency" brought by a labor organization member, "*no interested employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.*" This language repels the defendants' limiting construction. If Congress intended to bar by the "interested employer" terminology only

litigation support by the immediate employer of the union member instituting an action or proceeding, then it could have used different language apt to the purpose; it could have said simply that it was barring litigation support by an employer to his employees. But Congress did not do this and the words "interested employer" simply do not connote the narrow intention urged by defendants.

Moreover, there is dispositive legislative history on the Senate floor (105 Cong. Rec. 6724-6725), where the proviso was added to the Section 101(a)(4) text as offered by Senator McClellan.[2] The original language of the proposed proviso, introduced by Senator Kuchel, stated that "*no employer or employer association*" could provide financing or encouragement to suits covered by the section. However, Senator Goldwater proposed that the "no employer" language be amended so as to bar financing only by any employer who has a "dispute, controversy, contract, connection, or relationship of any kind in any area of activity, with the labor organization against which such action or proceeding has been or is being brought by such member." Senator Clark immediately objected that this might open up "an undesirable loophole," by permitting employers "who just did not like unions generally to finance the activities which they are forbidden to finance or encourage . . ." After further expressions of reluctance by the proponents of the proviso, Senator Goldwater persisted that even a loan from a personal friend of the employee, who happened to be an employer, was precluded by the "no employer" language, and Senator Mundt added that a loan from a bank

[2] See Appendix, *infra*, for the originating legislative history of the "interested employer" prohibition.

would be similarly proscribed. To settle the matter, Senator Kuchel offered the compromise "interested employer" language, which was accepted by all. Senator Goldwater requested that "the proponents of this interesting word 'interested' " explain it in order "to make a legislative history" and Senator Allot asked whether the language as amended would "include 'any' employer? Let us assume that the employer is in the general grocery business. Would the word 'interested' include any other employer?" Senator Javits responded for the proponents:

> "I think it probably would if the litigation involved the union in the whole line of business . . ."

From this record, it is clear that far from confining the proviso's inhibition only to the immediate employer of the litigating employee, it was the intent of the Congress to permit employer financing of employees' suits against their unions only in rare and unusual cases such as the personal friend or the bank loan situation where the contributing employer has no economic stake in the subject or the outcome of the union member's suit.

On October 24, 1973, defendants' motion to dismiss was rejected by the District Judge. Upon careful analysis, the Court's jurisdiction of the first cause of action was upheld under the specific terms of Section 102 of the Act (Memorandum Opinion at pp. 2, 3-5). As to defendants' "immediate employer" argument, the District Court noted (Memorandum Opinion at p. 6, n. 2) that they had failed to make any verified claim that none of the immediate employers of the employees who have sued unions with Foundation support have contributed to the Foundation, and thus

the statutory construction question was not presented for resolution.

5. *The Disclosures Sought.* On December 13, 1973, plaintiffs filed the interrogatories which are the basis of the District Court's order of June 5, 1974, compelling disclosure. When disclosure was refused concerning employer contributions to the Foundation, on January 18, 1974, plaintiffs moved in the District Court for an order requiring defendants to reveal, under conditions of litigation confidence, the names of some 190 of the more than eight thousand employer contributors to the Foundation. These included 1) the names of any contributing employers among the 116 employers publicly and frequently listed by the Foundation in its brochures as the members of its "Business Advisory Council" and 2) 74 other employer donors' names — the 37 employers who admittedly donated between $500 and $5000 each in 1972, and another 37 taken at random from among employers who contributed less than that amount in 1972.

The function of the limited disclosures sought was made clear in plaintiffs' Memorandum Supporting Motion to Compel Answers to Interrogatories. Plaintiffs there pointed out that the central question for trial in this case is whether the employers contributing vast amounts annually to the Foundation's financing of suits by union members against their unions are "interested employers" witnin the meaning of the statute. Plaintiffs urged (at pp. 4-5) that the limited disclosure sought of a sample of contributing employers' names would enable plaintiffs to test and to demonstrate employer "interest" along five separate lines of relevant inquiry into that question:

i. One key area of inquiry is whether the contributing employers include employers engaged in the same "lines of business" as the labor unions against whom the defendants are financing suits by dissident employees. As we have noted (supra, pp. 7-8), the legislative history of the 'interested employer" clause of the statute makes clear that an employer in the same line of business would be an "interested employer." Indeed, in their brief in the District Court on the disclosure issue (Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Compel Answers to Interrogatories), defendants themselves conceded the materiality of the "same line of business" inquiry, for in their own view Congress intended that an employer is an "interested employer" when he is "in the same line of business." As they put it (at p. 7):

> "The legislative history of § 101(a)(4) shows, therefore, that Congress, particularly the Senate, envisioned a union member's lawfully securing assistance to sue his union from anyone except an employer whose own activities or economic interests were in the same line of business as the employer whose union member employees were in litigation."

ii. A second key line of inquiry plaintiffs would pursue upon disclosure of a sample of the contributing employers' names is whether the employers have any relationship with the unions who are defendants in the Foundation-financed employee suits. As we have shown (supra, pp. 7-8), in precipitating the change on the Senate floor from the original "no employer" to the ultimate "no interested employer" terminology, Senator Goldwater had initially offered an amendment which the sponsors found too extreme and rejected. But significantly, even Senator Goldwater's proposed

amendment would have applied the bar of the proviso to any employer who has a "dispute, controversy, contract, connection, or relationship of any kind in any area of activity . . ." with the labor organization being sued. Plaintiffs plan to show upon disclosure of 190 employer identities that a portion of the Foundation's employer contributors meet the Congressional understanding that an employer with any kind of relationship to a union defending a member's suit is barred by the proviso from financing that suit.

iii. A third key inquiry plaintiffs would pursue is whether any of the sample of contributing employers have union security contracts. Almost all the Foundation-financed employee suits seek to invalidate agency shop or other union security agreements. Employers with union security agreements obviously have an immediate economic "interest" in test suits which seek to invalidate such agreements. It is the nub of the Seventh Circuit's ruling in *Adamszewski* v. *Local 1487, Machinists,* 496 F.2d 777 (1974), cert. denied, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231), that "*a practical business interest in the suit*" meets the financing ban of the proviso (at p. 784). Plaintiffs desire disclosure of employer donors' names to meet this pragmatic test of employer interest.

iv. A fourth area of inquiry is whether employers supporting the Foundation are also supporting the defendant Committee, because the Committee is demonstrably engaged in a variety of directly anti-union activities, including the use of anti-union and anti-strike moving pictures (see Plaintiffs' Answers, answer 8, at pp. 22-23), literature (tr. 291, 317, *et seq.*) and even direct lobbying against such measures as the

extension of the National Labor Relations Act to agricultural workers (tr. 364).

v. A fifth significant line of inquiry plaintiffs desire to pursue upon identification of a sample of the employer donors to the Foundation concerns other anti-union activities of the contributing employers, which may underscore the basis of their donations to the Foundation.

6. *Proceedings on Plaintiffs' Discovery Motion.* Defendants extensively briefed their opposition to the disclosures sought.[3] Oral argument was had on May 2, 1974, defendants being represented before the court by Mr. Whitney North Seymour of New York. Upon due deliberation, on June 5, 1974, the District Court entered an Opinion and Order (Pet. 9A) compelling disclosure of the names sought, under the litigation confidentiality restriction which plaintiffs had included in their proposed order.

As the District Court made clear in its subsequent Order of June 20, 1974, refusing to certify the case to the Court of Appeals (Pet. 13A-15A), the central question presented is governed by the ruling of the Court of Appeals in *Carey* v. *Hume*, 492 F.2d 631 (C.A.D.C., 1974), cert. dismissed, 94 S.Ct. 2654 (1974), that the First Amendment is not an absolute barrier to the compelled disclosure of material evidence necessary to

[3] Defendants' Memorandum of Law in Opposition to Plaintiffs' Motion to Compel Answers to Interrogatories and Defendants' Response in Opposition to Plaintiffs' Reply Memorandum Supporting Motion to Compel Answers to Interrogatories. See, also, the earlier Defendants' Memorandum of Points and Authorities in Support of Motion for Protective Order [filed October 24, 1973] and Defendants' Response to Plaintiffs' May 2, 1974 Memorandum Regarding Section 101(a)(4) [filed May 13, 1974].

litigation of the issues. The District Court emphasized (Pet. 14A) that the information plaintiffs here seek "goes to the heart of this litigation," that plaintiffs had "demonstrated good cause for obtaining the necessary information," and that "there is no other reasonable way for Plaintiffs to obtain the information sought."

On June 27, 1974 defendants filed in the Court of Appeals a petition for writ of mandamus to review the District Court's disclosure order and also an attempted appeal from that order. On June 28, 1974 the Court of Appeals issued an order (Pet. 11A) dismissing the appeal, "this Court not having jurisdiction over the order appealed from," and another order (Pet. 16A) establishing an expedited briefing schedule on the mandamus petition and staying the disclosure order of the District Judge. Rather than awaiting disposition of their mandamus petition by the Court of Appeals, defendants seek review here of that Court's dismissal of their interlocutory appeal. We demonstrate below that the dismissal action presents no substantial question for review.[4]

---

[4] Defendants' petition also purports, in the second of their "questions presented," to bring to this Court the substance of their claim of constitutional immunity from being required to reveal the information encompassed in the District Court's disclosure order. But that claim is not properly presented here before its adjudication by the Court of Appeals. In any event, we demonstrate in Point II of the Reasons for Denying the Writ that there is no substance to petitioners' claim of constitutional immunity from an order for disclosure of evidence highly material in this civil litigation.

REASONS FOR DENYING THE WRIT

I

NO SUBSTANTIAL QUESTION ARISES FROM DISMISSAL OF PETITIONERS' ATTEMPTED INTERLOCUTORY APPEAL.

Petitioners ask this Court to review the determination by the Court of Appeals that it has no jurisdiction over their attempted interlocutory appeal of the District Court's disclosure order. But even the occasions when this Court has approved the use of the extraordinary "all writs" authority to review interlocutory rulings are few and far between, restricted to most unusual situations. See, e.g., *Ex Parte Peru*, 318 U.S. 578 (1943); *La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957); *Schlagenhauf* v. *Holder*, 379 U.S. 104 (1964); *United States* v. *United States District Court*, 407 U.S. 297 (1972). The present case does not even present a basis for review by the extraordinary writ, much less for review by appeal. Where there has been attempted an interlocutory appeal of a discovery order, this Court long ago has held it unavailing. See *Cobbledick* v. *United States*, 309 U.S. 323, 326 (1940), reaffirming *Alexander* v. *United States*, 201 U.S. 117 (1906); cf. *United States* v. *Ryan*, 402 U.S. 530 (1971). The possible exception reflected in this Court's recent ruling in *United States* v. *Nixon*, 94 S.Ct. 3090 (1974), was expressly restricted to "the unique setting" in which that case arose (94 S.Ct. at 3099). By contrast, defendants' claim of right to appeal an ordinary disclosure order in a civil suit would open the door to wholesale interlocutory review of discovery rulings in the federal courts. The present rule, requiring that an objecting party who desires to test the issue in the appellate courts refuse the order of disclosure and seek review of the ensuing contempt or other sanction imposed, is the one which Congress intended and this

Court has approved (*id.*). Experience indicates that in cases of genuine objection to disclosure that procedure serves to protect parties in civil litigation without inviting the wholesale interlocutory review which Congress has not authorized.[5]

Moreover, the proposed issue for this Court's resolution evaporates completely in view of the fact that the Court of Appeals when it dismissed the interlocutory appeal nevertheless took under advisement defendants' petition for mandamus and stayed the District Court's disclosure order. Thus, defendants, in attacking the dismissal of their appeal, can present to this Court only a lifeless issue lacking any impact in the present case. Finally, as we proceed to show, all apart from the sterility of the jurisdictional question they present there is also no merit at all to defendants' attack upon the District Court's order that they disclose relevant evidence which goes to the essence of the pending civil suit.

II

PETITIONERS HAVE NO PLAUSIBLE CONSTITUTIONAL BASIS FOR REFUSING DISCLOSURE OF THE MATERIAL EVIDENCE SOUGHT BY PLAINTIFFS.

Finding that the information "goes to the heart" of the case, the District Court granted plaintiffs' request for disclosure under conditions of litigation con-

---

[5] In addition to contempt appeals there is also the safety valve, in cases of genuine doubt, of the certified question procedure. That procedure was adopted in a recent discovery case (*Carey* v. *Hume*, 492 F.2d 631 (C.A.D.C., 1974), *cert. dismissed*, 94 S.Ct. 2654 (1974)), but in this case the District Judge, applying *Carey*, found no unresolved controlling question of law presented which would warrant a certification (Pet. 13A-15A).

fidence of the names of a sample of 190 employers among more than eight thousand employer-contributors to the defendant Foundation. The District Judge in so ruling did not transgress the First Amendment because the Constitution does not shield a party in civil litigation from disclosure of material evidence. Defendants are quite mistaken in their suggestion (Pet. 15-16) that *NAACP* v. *Alabama*, 357 U.S. 449 (1958), makes the First Amendment a basis for concealment of relevant evidence properly related to a legitimate inquiry. This Court there (at p. 463) held only that in a First Amendment-protected area there must be an "interest in obtaining the disclosures" which is "sufficient to justify the deterrent effect" of the disclosures. That sufficient interest has been defined in a long series of rulings, beginning with *Watkins* v. *United States*, 354 U.S. 178, 208-215 (1957), as arising from the relevance of the information to a legitimate legislative or judicial inquiry. See, e.g., *Scull* v. *Virginia*, 359 U.S. 344, 352-353 (1959); *Bates* v. *Little Rock*, 361 U.S. 516, 525 (1960); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539, 551 (1963). Accordingly, relevant evidence can neither be withheld in criminal proceedings (*Branzburg* v. *Hayes*, 408 U.S. 665 (1972); *United States* v. *Nixon*, 94 S.Ct. 3090 (1974)) nor in civil litigation (*Garland* v. *Torre*, 259 F.2d 545, (C.A. 2, 1958), cert. denied, 358 U.S. 910 (1958), approved in *Branzburg* at p. 686; *Carey* v. *Hume*, 492 F.2d 631, (C.A.D.C., 1974), cert. dismissed, 94 S.Ct. 2654 (1974)). Of course, before enforcing disclosure there must be a showing both of materiality and unavailability. Here

the District Judge specifically found both materiality and unavailability (Pet. 14A).[6]

If, as is clear, the District Judge ordered disclosure of evidence highly material in this civil litigation and not otherwise obtainable, defendants have no First Amendment shield against the disclosure. However, they also contend that the statute must be construed not to prohibit employer contributions to their activities, and that since the suit is thus faulty on its merits no evidentiary disclosures should be required. Assuming *arguendo* that defendants can thus put the cart before the horse, achieving interlocutory resolution of merits statutory construction questions so as to avoid discovery, nevertheless neither of their statutory construction contentions has any validity:

(1) Defendants' first contention (Pet. 9-10) is that the proviso prohibiting interested employer financing of members' suits is confined to suits brought

---

[6] Defendants insisted before the District Judge, and continue to plead here (Pet. 18) that plaintiffs could determine the extent and character of the "interest" of the Foundation's employer-contributors by deposing the immediate employers of the employees who are suing the unions with the Foundation's financing. However, the employer financing attacked in this litigation is not by those 40 or 50 companies, but by the many thousands of employers who use the Foundation as a front and conduit to finance anti-union litigation throughout the nation. As we have shown (*supra*, pp. 7-8) the legislative history makes quite clear, and defendants have even conceded that the "interested employer" prohibition is not confined to the immediate employer of the member suing his union, but includes all those in "the same line of business" or otherwise having an interest in the member's action against his union. Thus the District Court properly found that there is no alternative source of the information needed by plaintiffs—a sample of the names of the thousands of employers who are financing the Foundation's operations.

under the Landrum-Griffin Act, or even more narrowly to suits brought under Title I of that Act. Actually, *that contention* may be of no avail to defendants because at least five of the dissident member suits financed by the Foundation plead in their complaints a Landrum-Griffin Title I claim,[7] while two others plead claims under Title V of the statute.[8] In any event, there is not a word in the text or the legislative history which would sustain restriction of the proviso to suits asserting Landrum-Griffin violations.[9] Indeed, Senator Goldwater, in the course of amending the preceding proviso of the same section made clear that § 101 (a)(4) is *not* confined to suits under Landrum-Griffin; rather the Senator emphasized that one of the most significant anticipated applications of the section was where a union might seek to inhibit a member from

---

[7] *Braden* v. *Local 146, Sheet Metal Workers' International Assoc. and Paul Mueller Company* (Civil Action No. 2829, U.S.D.C. for W.D. of Mo., Southern Div.); *Fishgold* v. *American Federation of Musicians, et al.* (72 Civil 5008, U.S.D.C. for S.D. of New York); *Forrester* v. *Operative Plasterers' & Cement Masons International Assoc., et al.* (Case No. 2689, U.S.D.C. for W.D. of Mo., Southern Div.); *Gabauer* v. *Woodcock, et al.* (72 C 164 (2), E.D. Mo.); *Huskey* v. *Woodcock, et al.* (72 C 165 (4), E.D. Mo.).

[8] *Gabauer, et al.* v. *Woodcock, et al.* (72-C-180(A), E.D. Mo.); *McNamara, et al.* v. *Johnston, et al.* (CA No. 71-C-654, N.D. Ill.).

[9] See "Legislative History of the Labor-Management Reporting and Disclosure Act of 1959" (Department of Labor) *passim*, and especially Section by Section Analysis in the Senate at 239; Remarks of Rep. Barden at 240; Remarks of Sen. Mundt at 241; Remarks of Sen. Kennedy at 300; Remarks of Sen. Goldwater at 300-301; Testimony of Senator Goldwater at 307-308; Statement by Chamber of Commerce at 317; Remarks of Rep. Landrum at 317-318; Statement by Mr. Meany at 322, 328, 331; Remarks of Rep. Elliott at 331, 332; Remarks of Rep. Foley at 333; Remarks of Sen. Kennedy at 360-361; Remarks of Sen. Griffin and Sen. Goldwater at 361.

seeking redress before the National Labor Relations Board. (See "Legislative History of the LMRDA of 1959," pp. 307-308 (Dept. of Labor)). The Senator's construction has been judicially approved. *Roberts* v. *NLRB*, 350 F.2d 427, 429-430 (C.A.D.C., 1965); *Industrial Union* v. *NLRB*, 379 F.2d 702, 708 (C.A. 3, 1967). This history makes perfectly clear that the "right to sue" guarantee of § 101(a)(4) is not confined to suits under LMRDA, and *a fortiori* neither is its second proviso. The plain language, the legislative history, and the judicial rulings thus preclude defendants' constructional shrinkage of the proviso.[10]

---

[10] Contrary to petitioners' claim, the Seventh Circuit's ruling in *Adamszewski* v. *Local 1487, Machinists*, 496 F.2d 777, *cert. denied*, 43 U.S.L.W. 3280 (U.S. Nov. 12, 1974) (No. 74-231) *does not hold that the proviso is confined to Landrum-Griffin suits*, but only that union members' rights of action under other statutes which are preserved by Landrum-Griffin's savings clauses will not be judicially *dismissed* because of illegal employer financial aid. Petitioners would obscure the clear distinction between the dismissal of a suit financed in violation of the proviso and direct enforcement of the proviso's own prohibition by an injunction against continuing violations, as sought in this case. That distinction is critical in view of the reason given by the Seventh Circuit for declining to make the proviso's violation the basis for dismissal of the employee's Railway Labor Act claim. The Court relied upon two savings provisions in the LMRDA (29 U.S.C. §§ 413 and 523(b)) which generally preserve employee rights of action under the NLRA and the Railway Labor Act (496 F.2d at 785, n. 7 and n. 8). The Court made the RLA savings clause the express basis of its ruling (496 F.2d at 784-785) that the proviso's violation "does not preclude relief sought" under the Railway Labor Act and plaintiffs were "not therefore precluded by 29 U.S.C. § 411 from pursuing any other remedies properly brought." We agree with the Seventh Circuit's reconciliation of the proviso and the savings clauses but here the question is whether employers may be enjoined from continuing to violate the proviso. Nothing in the *Adamszewski* holding of non-dismissability suggests that the proviso is inapplicable to an employers' contributions to a union member's action pressing claims under statutes other than LMRDA.

(2) Equally fallacious is petitioners' alternative suggestion (Pet. 19) that *NAACP* v. *Button*, 371 U.S. 415 (1963), supports their refusal to disclose the identities of any contributing employers, on the ground that the statute cannot constitutionally be applied to inhibit the Foundation from using employer money to finance dissident employees' suits against their unions. Here the nub of the litigation-financing prohibition which Congress has adopted is the historic principle of our national labor law which requires employers to stay out of internal union affairs and controversies. In forbidding employers to finance dissident members' suits against their unions as a means of advancing the employers' own economic interests against labor, Congress has applied a bedrock labor law principle banning employer interference in the relations between a union and the employees it represents.

That principle was first embodied in Section 10 of the Erdman Act of 1898 (30 Stat. 424) prohibiting the "yellow dog contract" by which employers had required their employees not to become union members. Its next manifestation was in the Railway Labor Act of 1926, which established the basic right of union action and membership free of "interference, influence, or coercion" by employers (45 U.S.C. § 152, Third). This Court upheld the statute on the ground that the employers "have no constitutional right to interfere with the freedom of the employees in making their selections" of union representatives. *Texas & N.O.R. Co.* v. *Ry. Clerks*, 281 U.S. 548, 571 (1929). Strengthening provisions were adopted in the 1934 Railway Labor Act, upheld by the ruling in *Virginian Ry. Co.* v. *System Federation*, 300 U.S. 515 (1937), which enjoined a carrier from "interfering with, influencing or coercing its shop craft employees" in their union

activities (at 538). Even more stringent protections were incorporated in the 1932 Norris-LaGuardia Act, which declared (29 U.S.C. § 102) the Congressional purpose that employees "shall be free from the interference, restraint, or coercion of employers of labor, or their agents . . ."

The principle was further extended and confirmed in 1935 by the National Labor Relations Act. That statute expressly preserves workers' rights of union organization against all forms of employer interference or coercion (29 U.S.C. § 151). This Court recognized in that respect that "coercion to prevent the free exercise of the right of employees to self-organization and representation is a proper subject for condemnation by competent legislative authority." *Labor Board* v. *Jones & Laughlin*, 301 U.S. 1, 33 (1936). The Act (§ 158(a)(2)) also forbids an employer to "interfere with the formation or administration of any labor organization or contribute financial or other support to it." This Court emphasized that in that respect the statute embodies the important policy "to free the collective bargaining process from all taint of an employer's compulsion, domination, or influence." *Machinists* v. *Labor Board*, 311 U.S. 72, 80 (1940). Among the forbidden means of interference are an employer's insistence on a particular method of employee voting on a union strike-call (*Labor Board* v. *Borg-Warner*, 356 U.S. 342 (1958)), or his bypassing of union negotiators to deal directly with the membership (*Labor Board* v. *Katz*, 369 U.S. 736 (1962); *NLRB* v. *General Electric Co.*, 418 F.2d 736 (C.A. 2, 1969)). Even the employer's good faith will not validate his mistaken interference in the employees' choice of their bargaining representative. *Garment Workers* v. *Labor*

Board, 366 U.S. 731 (1961). Strengthening amendments adopted in 1947 forbid (in § 186(a)) an employer giving "any money or other thing of value to any representative of any of his employees," a provision adopted in order to preclude "bribery of employee representatives by employers." *Arroyo* v. *United States*, 359 U.S. 419, 425-426 (1959). In 1959 the prohibition on employer payments was extended to cover employer associations, labor relations experts, and any person or association "who acts in the interest of an employer" (*id.*).

The second proviso to § 101(a)(4), adopted in 1959, which the present litigation seeks to vindicate, is but one more application of the principle barring employer interference in union affairs. On the one hand the body of § 101(a)(4) guarantees to members the right to sue their union in any judicial or administrative forum; on the other hand it equally prohibits any "interested employer" or employer association from "directly or indirectly" fostering or financing such suits. Thus, unlike *NAACP* v. *Button*, 371 U.S. 415 (1963) and following rulings cited by defendants (Pet. 19), there is here a wholly legitimate legislative purpose rooted in the fundamentals of our labor law—the guarantee of employer neutrality and non-interference in union affairs—which validates the statutory prohibition on interested employer financing of members' suits against their unions. That valid legislative purpose puts this case quite beyond and apart from governmental attempts to ban the litigating activities of the NAACP or the ACLU.[11]

---

[11] The defendant Foundation's entire litigation-financing program is confined to employees' suits against their unions, most of them to enjoin collection of union dues or agency shop payments. Should the ACLU or the NAACP undertake a special program fi-

* * * * * * * * * * *

Petitioners' *NAACP* v. *Button* contention is also fallacious because it is clearly premature for petitioners to claim (Pet. 18) that "the Foundation is constitutionally no different from" the NAACP or ACLU. Such a constitutional claim is surely not resolvable before the crucial facts are disclosed and a trial has been had, particularly when asserted in an effort to justify concealment of the constitutionally relevant facts. Resolving the constitutionality of the proviso's application to prohibit interested employer funding of the anti-union suits financed by the Foundation requires a trial to determine critical facts: the fact that the Committee and Foundation are chiefly financed by and act as fronts for employers; that the Committee undertakes direct anti-union lobbying, publications, and other activities and is operated hand-in-glove with the Foundation by the same executive director; that the Foundation-financed suits by dissident unionists to enjoin or confine agency shop and union shop contracts are in the direct economic interest of employers seeking to weaken union solidarity and treasuries; that the Foundation has an inter-employer fund solicitation campaign which appeals directly to employers' interests in inhibiting the operation of union security arrangements. These and similar facts elucidated and resolved by a trial constitute the indispensable predicate for adjudicating defendants' claim that the statute cannot constitutionally be applied to bar interested employers from funding the Right to Work Foundation's financing of suits by employees against their unions, for Congress surely can prohibit employers from

---

nancing such suits against unions by their members, the § 101(a)(4) proviso would equally bar interested employers from providing the funding for such a program, and we suggest that it would validly do so in view of the crucial statutory purpose behind the proviso's adoption.

seeking to advance their own economic cause by financing back door attacks on labor through dissident member suits against unions.

This Court has recognized ever since *Borden's Co.* v. *Baldwin*, 293 U.S. 194, 212 (1934), that before constitutional challenges are resolved "the facts essential to their decision should be definitely found by the lower courts upon adequate evidence." Applied again in *United States* v. *Auto. Workers*, 352 U.S. 567, 591 (1957), the rule was recently invoked in *Askew* v. *Hargrave*, 401 U.S. 476, 479 (1971), where the Court emphasized that the constitutional claim "should not be decided without fully developing the factual record at a hearing." At this juncture, therefore, defendants cannot make the alleged invalidity of the statute's ultimate application to their activities a ground for concealing the information which can disclose that the contributing employers do indeed have concrete economic interests which validly invoke the statutory proviso's prohibition. Thus, petitioners have no plausible constitutional basis for refusing disclosure of the material evidence sought by plaintiffs.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOSEPH L. RAUH, JR.
JOHN SILARD
ELLIOTT C. LICHTMAN
HARRIETT R. TAYLOR
RAUH AND SILARD
1001 Connecticut Ave., N.W.
Washington, D.C. 20036
Attorneys for Respondents

APPENDIX

APPENDIX

LEGISLATIVE HISTORY OF THE SECOND PROVISO TO SECTION 101(a)(4), LMRDA

(105 Cong. Rec. 6724-6725) (April 25, 1959)

"*Mr. Goldwater.* Mr. President, as time is running out, wish to turn to page 4 of the amendment, and invite the ttention of the Senator from California to line 4, page 4:

> That no employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

I think that is a good provision. I agree with the enator from California, which may surprise him.

Mr. Kuchel. No; it does not surprise me. I think the enator from Arizona is one Member of the Senate who serves the salute of all of us for the constant attention has given in this field.

Mr. Goldwater. I thank the Senator.

I ask the Senator from California if he would accept an nendment in the form of an addition; on page 4, at the d of line 6, before the period, to add the following words: nless such employer has no dispute, controversy, con- ct, connection, or relationship of any kind in any area activity, with the labor organization against which such ion or proceeding has been or is being brought by such mber.'

et us say a businessman is a neighbor of a union mber, and he is trying to finance him. The businessman no dispute with his neighbor. He may be in business nother community. If the language proposed were to ly, it would prevent such a laboring man from being need by his friend, the employer.

do not think my request is an unreasonable one. I think ould add strength to the provision which has been posed.

Mr. Clark. Mr. President, will the Senator yield?

Mr. Goldwater. I am happy to yield.

Mr. Clark. It occurs to me that, while I certainly recognize the good motives of the Senator from Arizona, the addition to the proviso might well open up an undesirable loophole. The instance cited by the Senator from Arizona is a legitimate one to raise; but, on the other hand, would it not be possible for an employer or association of employers who just did not like unions generally to finance the activities which they are forbidden to finance or encourage merely because, as a matter of philosophy—

Mr. Goldwater. I am not talking about an association in my amendment. I say 'employer.' I refer to a case in which a man who lives next door, or is a friend of the workingman, offers to finance him.

Mr. Clark. I understand. As the Senator from Tennessee knows, I had the privilege of listening to the president of the United States Steel Corp. testify before the Antitrust and Monopoly Subcommittee. He is a fine American and a great businessman, but he just does not believe in unions. From where he sits, perhaps he is right. I would not want him to finance his neighbor in order to break up a union to which he belonged.

Mr. Goldwater. Contrary to what my friend may think, I not only believe in unions; I want them to get bigger and better. I object to the way some of them are run. I would not, for that reason, and for the fear that somebody might dislike a union, want to preclude a friend from using funds which would come under the purview of this section. I want to give him the freedom to use the funds.

Mr. Clark. I am speaking as only one of the sponsors. I dare say it is no secret that this colloquy will enable my colleagues to determine what they want to do. I think I am right, but if my colleagues desire to accept the amend-

ment of the Senator from Arizona, I would have no serious objection to accepting his amendment.

Mr. Goldwater. While the Senators in this part of the Chamber are deciding on the language, I wish to state that the Senator from California did not finish reading his amendment to title II, Reporting by Labor Organizations. It contains the language which is contained in the committee bill, I certainly have no objection to it. I make that statement so the Senator from California will not need to read it.

May I now ask to what conclusion my friend has come about my suggested change?

Mr. Kuchel. I say this, Mr. President, that language is not sufficiently clear to the coauthors of the amendment who are in this part of the Chamber at present for me to stand up and say, 'We accept it.'

The sentence we are discussing, which my friend from Arizona would like to amend by adding more words to it, reads:

> No employer or employer association shall directly or indirectly finance, encourage, or participate in, except as a party, any such action, proceeding, appearance, or petition.

That is all that clause states. In other words, it would be an unfair practice, it would be against the law, for an employer or an employer association, directly or indirectly, to spend any money or otherwise to get into that type of situation, unless it were a party. Is that not good public policy?

I do believe we ought not to clutter up that language. It is clear. The provision is an attempt to protect a union member who may be engaged in a dispute with the organization. My colleagues would not want me to accept the amendment.

Mr. Goldwater. Let me ask another question. Let us suppose the man to whom we are giving these rights has

no money to enable him to go to court, has no money with which to finance a suit, but has a friend, who is an employer, who says, 'John, I will lend you the mony to go into court —but wait a minute; I cannot do it, because no employer can do it.' Are we not tampering with the basic right of a man to borrow a dollar or two from a friend?

Mr. Mundt. Mr. President, will the Senator yield?

Mr. Goldwater. I yield.

Mr. Mundt. It seems to me he could not go to any bank, either, if the bank is an employer.

Mr. Goldwater. The Senator from South Dakota has made a good point. He could not go to a bank to borrow the money, because the bank would be an employer. In fact, the union member could not borrow it from his own union, because his union is an employer.

Mr. Clark. Mr. President, will the Senator yield?

Mr. Goldwater. I yield.

Mr. Clark. It occurs to me that we ought to make very clear at this point, by the legislative history, if my friend will indulge me, that the somewhat strained construction of the word 'employer' which has been given in the last colloquy is not intended by anybody to apply, and that certainly an employee could go to a bank to borrow money for his defense, and there should not be a shadow of doubt about it.

Mr. Mundt. Could the Senator from Pennsylvania tell us of a bank which is not an employer?

Mr. Goldwater. Under this language the union member could not do it.

Mr. Kuchel. Mr. President, if the Senator from Arizona will yield, it has been suggested by the senior Senator from New York that the word 'interested' could be added in line

4, after the word 'no', so as to make the language read, 'no interested employer or employer association.' If the Senator would accept that amendment, with the legislative history which has been developed, I think it would soive his problem.

Mr. Goldwater. Will the Senator explain what that means?

Mr. Clark. If the Senator will yield, I think it would clearly mean the language would not include a bank.

Mr. Javits. Mr. President, will the Senator yield?

Mr. Goldwater. I understand what it means, but we want to make a legislative history. I want the proponents of this interesting word 'interested' to explain it.

I yield to the Senator from New York.

Mr. Javits. I have in mind the fact that an employer who has an interest in the litigation ought not to bring pressure upon a union. In the eventuation of a relationship of the litigant to the union, an interested employer should not be a party to finance the suit.

We ourselves are so against antibarratry statutes that I do not want to be a party to a law which would prevent a union member from finding a friend, who happens to be an employer of people in a totally unrelated business, a bank or anything else, to loan him the money. We should not have a law to make it impossible to borrow from a friend to start a suit.

Mr. Allott. May I ask a question, for the legislative history?

Mr. Goldwater. I yield.

Mr. Allott. Including the word as the Senator has used it, in the opinion of the Senator would the language include 'any' employer? Let us assume that the employer is in the general grocery business. Would the word 'interested' include any other employer?

Mr. Javits. I think it probably would if the litigation involved the union in the whole line of business, because the words of art are 'employer or employer association.'

Again we have a balance of convenience. Neither side ought to trim this, and that is why I have given the legislative history."